

REPORTS OF CASES

DETERMINED IN THE

COURT OF NIZAMUT ADAWLUT

FROM JULY TO DÉCEMBER, 1852.

WITH AN INDEX.

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6. Conviction of accompliceship in culpable homicide, affirmed in appeal, ...	81
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18. The prisoner was convicted of culpable homicide in having so assaulted the deceased, his concubine, while in an advanced state of pregnancy, that having given birth to a dead child she not long afterwards died, ... 376
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22. The deceased died after being struck by the prisoner in the head with a bamboo, but whether from the effects of the blow or from immersion in water into which he fell was uncertain. The prisoner was convicted of culpable homicide, ... 463
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26. The prisoners, after seizure of him, without resistance, having maltreated the deceased, caught in the premises of one of them, so that he died, were convicted by the sessions judge and by the Nizamut Adawlut on appeal of culpable homicide, ... 671

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II. <i>Acquittals.</i>	V. <i>With Torture.</i>
III. <i>Accessory to.</i>	VI. <i>With Wounding.</i>

I. *Convictions in.*

1. The Conviction by the sessions judge of the prisoners, affirmed, but the sentences passed on some of them considered, with reference to the circumstances of the case, to be lenient. One dacoit being killed in the attack, his comrades, to prevent recognition, cut off his nose, and then abandoned the corpse, ...	1
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7. Sentence of 16 and 14 years' imprisonment on prisoners convicted of dacoity confirmed, ...	149
8. Prisoners convicted of dacoity on presumptive proof, sentence confirmed, ...	178
9. Sentence of 14 and 7 years' imprisonment on prisoners convicted of dacoity, confirmed. The <i>Sirdars</i> being shown to be notorious dacoits, might with propriety, have been recommended for transportation for life,	189
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11. The prisoner's plea in appeal differed from his defence and his guilt was otherwise established, ...	353

12. Sentence of 7 years' imprisonment for dacoity, confirmed in appeal, ...	356
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2. The prisoners were acquitted, the evidence for the prosecution being considered unsatisfactory, ...	644
3. Two of the prisoners were acquitted on appeal for want of proof against them, notwithstanding the weakness of their defence. Conviction and sentence upon the third prisoner, affirmed, ...	729
4. A prisoner convicted of dacoity by the sessions judge acquitted by the Nizamut Adawlut, there not being ground of legal conviction, though there were strong circumstances of suspicion against him, ...	824
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3. Property found in the drain belonging to the prisoners' house, held not to be evidence of their guilt, as there was nothing to prevent the access of others to the drain, ... 489

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4. The act of the prisoner having been held by two judges of the Nizamut Adawlut, in dissent from a third judge, to be wilful murder, he was sentenced to death, ... 218
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3. The prisoner, who pleaded the existence of adulterous intercourse between his wife and the deceased, his brother, although convicted of murder, was, under the extenuating circumstances, only sentenced to transportation for life, ... 318
4. Three of the prisoners, although convicted of murder, were not sentenced, under the circumstances of the case, to death, because the body of the deceased was not found, and there was no such cogent and irresistible proof of the truth of the confessions as would warrant the passing of an irrevocable sentence, ... 321
5. To revenge a murder, being with the *kookees* a sacred and honorable deed, and the provocation which the prisoners received, having been of the gravest kind, the head of their clan having been killed under circumstances which must to them have borne the character of a wanton murder, and their chieftain, when dying having called upon his clan to retaliate his death, the Nizamut Adawlut agreed with the local authorities in the propriety of passing a mitigated sentence, and considered that proposed by the joint magistrate, amply sufficient to satisfy the ends of justice, exempting also the imposition of irons, ... 335

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10. Conviction and sentence of 5 years' imprisonment affirmed in appeal, ...	518
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5. Prisoner charged with the wilful murder of a young child, acquitted by the Nizamut Adawlut, the evidence, though causing much suspicion, not raising such a degree of presumption as would authorize her conviction, ...	854
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3. The sentence passed on two of the prisoners convicted of perjury mitigated on appeal, ... 104
4. A witness convicted of perjury for having in a trial in the magistrate's court, asserted that he saw ten men, four of whom he named, commit a crime, and in the sessions court, that there were but two concerned. Held on appeal, that failure of memory cannot be allowed to be a sufficient excuse for such discrepancy, ... 145
5. The prisoner's intent having been to get readier credit to his evidence was convicted of perjury, ... 176
6. Held that it does not necessarily follow, that the party, in whose favor the witnesses may have deposed falsely, suborned them to commit perjury, ... 421
7. Perjury and subornation of perjury. Sentence of 5 years' imprisonment confirmed, ... 487
8. Sentence of 3 years' imprisonment confirmed on appeal, ... 560
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G A S E S

IN THE

N I Z A M U T A D A W L U T.

PRESENT :

A. J. M. MILLS, Esq., *Officiating Judge.*

MULLICK DURGAHEE AND MULLICK TUBARUK
HOSSEIN,

versus

DURUREE (No. 12), BUNDHOO (No. 13), JUGROO
(No. 14), MANSINGH (No. 17), BEEJAH (No. 18),
BHIOLLAH (No. 19) AND KHEMAN (No. 20).

CRIME CHARGED.—1st count, Nos. 12 to 14 and 17 to 20, dacoity with plunder of property valued at rupees 1079-11-0; and 2nd count, Nos. 12 to 14, 17 and 18, having in their possession plundered property, knowing at the time the same to have been obtained by dacoity.

CRIME ESTABLISHED.—Nos. 18, 19 and 20, dacoity with plunder of property valued at rupees 1079-11-0, Nos. 12, 13, 14 and 17, having in their possession plundered property, knowing at the time the same to have been obtained by dacoity.

Committing Officer, Mr. G. G. Balfour, magistrate of Monghyr.

Tried before Mr. R. N. Farquharson, officiating sessions judge of Bhaugulpore, on the 17th April 1852.

Remarks by the officiating sessions judge.—“Prisoners all plead ‘not guilty.’”

“The facts of the case are these:—At about 8 P. M. on the night in question, a gang of dacoits, consisting of some twenty or twenty-five men, armed with guns, swords and spears, and with several lighted torches, attacked the house

1852.

July 2.

Case of
DURUREE and
others.

The conviction by the sessions judge of the prisoners, affirmed, but the sentences passed on some of them considered, with reference to the circumstances of the case, to be lenient.

One dacoit being killed in the attack, his comrades, to prevent recognition, cut off his nose, and then abandoned the corpse.

1852.

July 2.

Case of
DURRREE and
others.

of Ghoolam Mukdoo, a respectable inhabitant and zemindar of mouza Chanderee. The alarm being given in the village, three men only turned out to afford aid, (witnesses Nos. 1, 2 and 5.) There was a crowd of other villagers, but they seem to have kept carefully aloof from the scene of action. One of the dacoits was killed by Laloo, witness No. 2, and the rest then retreated with their booty. Tubaruk Hossein, prosecutor, was in the house when attacked, but ran away, and did not return till the dacoits had left. Some of the dacoits broke into the house and frightened the women into pointing out the hiding places of their valuables, &c., &c., while the rest stood at the door, and threatened any one who approached with instant death, firing off guns, as is usual in such cases, to intimidate the neighbours; no other violence however was actually committed, and it was only in turning back to keep off the three bold villagers above alluded to, who were harassing the retreat, that Sookhdeal, deceased, met with his death at the hand of Laloo. The dead man's nose was cut off by his companions to prevent recognition, but the body was left where it fell.

"These are the circumstances of the attack, established on the clearest evidence, but unfortunately none of the dacoits were recognized. The witnesses, one and all stating distinctly that they could not identify any of the prisoners with the armed men concerned in the crime. The discovery of those concerned did not take place for some days; it was brought about by witness No. 7, a neighbouring zemindar, who hearing of the whereabouts of the widow of the man that was killed, followed up the scent, and succeeded in arresting the fourteen prisoners who have just stood their trial, Nos. 10 to 23, inclusive. Nos. 12 to 23 inclusive, are said to have confessed at the thanna, but I place no confidence in this confession. Nos. 18, 19 and 20, confessed before the magistrate to have been concerned in the dacoity; and on this confession, duly attested, their conviction mainly rests. Nos. 10, 11, 15, 16, 21, 22 and 23, have neither of the counts clearly brought home to them. Nos. 18, 19 and 20 are proved to be liable, on the first count, of dacoity with plunder of property, &c., and Nos. 12, 13, 14 and 17, on the second count only, of having in their possession plundered property, knowing the same to have been obtained by dacoity (No. 13 is own brother, and No. 14 first cousin of the deceased dacoit Sookhdeal). The jury bring in their verdict accordingly, which has my concurrence, and I sentence the prisoners as noted.

"There being no outrageous violence attempted, and no one being injured, except deceased, of their own party, and none of the prisoners being pointed out as old offenders, I have made the punishment milder than the occasion and prevalence of this crime would otherwise seem to call for."

Sentence passed by the lower court.—Nos. 12, 13, 14 and 17, each, five (5) years' imprisonment, with labor and irons, and Nos. 18, 19 and 20, each, ten (10) years' imprisonment with labor and irons.

1852.

July 2.

Case of
DURRUM and
others.

Remarks by the Nizamut Adawlut.—(Present: Mr. A. J. M. Mills.)—"The prisoners have appealed. They merely state in their petition of appeal, that they are dissatisfied with the judgment of the sessions judge. The prisoners were arrested on the information of the wife of the dacoit who was killed in the attack. The prisoners Nos. 12, 13, 14 and 17, confessed before the darogah, that they took a part in the dacoity and obtained a share of the booty. Their confessions have been duly attested, and are corroborated by the well-established fact, that they gave up several articles of property which were plundered from the prosecutor's house, and which have been identified as his property. They were clearly implicated in the original crime, and should have been convicted on the first count of dacoity, and not on the second of being accessaries after the fact in receiving stolen property. This is the more to be regretted as they have been sentenced to only five (5) years' imprisonment, a punishment altogether unsuited to the very heinous offence they committed. The conviction of the prisoners Nos. 18, 19 and 20, is good. I reject the appeal."

PRESENT:

R. H. MYTTON, Esq., *Officiating Judge.*

GOVERNMENT,

LOOTAWUN DOOBEY.*

CRIME CHARGED.—Administering poisonous or intoxicating drugs with water, with intent to steal, to Puryag Kahar, *ban-ghyburdar*, proceeding from Domeraon to Benares, on or near the tank at Bhojepore Poorana, *ilagua* thanua Domeraon, in the district of Shahabad, on or about the 17th April 1852, corresponding with 13th Bysakh 1259 F. S.

1852.

July 3.

Case of
LOOTAWUN
DOOBEY.

Committing Officer, Mr. H. M. Nation, assistant general superintendent for the suppression of thuggee and joint magistrate of Patna.

Administering poisonous drugs with intent to steal. Sentence, imprisonment for life in transportation.

Tried before Mr. R. J. Loughnan, sessions judge of Patna, on the 9th June 1852.

Remarks by the sessions judge.—"The reason of this reference is a difference of opinion between myself and the law officer of the court. The law officer does not consider the evidence sufficient to establish the charge and acquits the prisoner. I

1852.

July 3.

Case of
LOOTAWUN
DOBBY.

am of opinion that he is convicted on the strongest presumptive proof.

"It appears from the evidence of Puryag, that the witness Shunkur, who was employed at the *pansulla* of Bhojepore Poorana to supply travellers with water to drink, was handing him a *lota* of water, when the prisoner snatched it out of Shunkur's hand, and after putting his own hand into the *lota*, on pretence of freeing the water from dirt or straws, gave it to Puryag, who after drinking two mouthfulls only, and complaining of the bitter taste of the water, to which prisoner replied it was owing to rotten leaves in the well, fell down insensible at the distance of forty yards from the spot where he had drank, (having first observed the prisoner following him,) and did not recover from his state of insensibility till the third day after. This evidence in regard to the prisoner putting his hand into the water on the pretence narrated above, was corroborated by that of Shunkur, who, though a boy of only ten years of age, appeared to understand the obligation of an oath, and by his mother, the witness Ablakee, who with him was employed to give water to travellers at the *punsulla*. Ablakee moreover states that prisoner had himself first drank water supplied by them before it was offered to Puryag.

• "Bheenuk, a sweetmeat seller, who lives in Bhojepore Poorana, deposed that he found Puryag lying insensible, while the prisoner was opening a *guthree* in a *banghy* close to him; that on his questioning the prisoner, he replied that the *banghy* was his own, and the man lying insensible was his companion; but he did not know what was the matter with him; that his replies and conduct made witness suspect he was a thief; and, in fact, he was making off, when witness thought proper to apprehend him and call for assistance, on which three chowkeedars came up and took him into custody.

"The chowkeedars Ramdeen, Nundoo and Bhoabul, gave the same account of the apprehension of the prisoner; and Ramdeen deposed that he saw Puryag for three days insensible at the thanna.

"The prisoner, in a statement duly proved by the witnesses who were examined in the sessions court, confessed at the thanna, that he was by profession a *chay*, that is, one who snatches up property when the owner is off his guard, that he was watching a traveller who had a bundle, but not Puryag and his *banghy*, when he was seized.

"The prisoner said Bheenuk had falsely accused him of being a *chay*, and that he was beaten and ill-treated at the thanna.

"It is quite clear from the above that Puryag swallowed something in the water, which, as two mouthfulls were sufficient

to throw him into a state of insensibility which lasted two days and upwards, must have been of a highly narcotic and even poisonous nature. The prisoner having just before drunk water, supplied by the same persons as had supplied it to Puryag, without any ill-effect, and having put his hand into the water before Puryag drank it on a frivolous pretext, and having been detected in the act of rifling Puryag's *banghy* while he lay insensible, the strongest presumptive proof is obtained that he it was who put the poison into the water in order to rob Puryag while in a state of insensibility.

"I consider the charge of administering poisonous drugs in water to Puryag, with intent to steal, proved against the prisoner, and would recommend that he should be sentenced to imprisonment, with hard labor in irons, for ten (10) years.

"I find from the thanna papers, that the prisoner was kept for considerably more than forty-eight hours at the thanna after his apprehension, in disregard of the express prohibition contained in Regulation XX. of 1817, and no sufficient notice appears to have been taken of the circumstance by the magistrate of Shahabad. Intimation of this circumstance will be given to the superintendent of police, in order that he may issue any orders he may deem necessary on the subject."

Remarks by the Nizamut Adawlut.—(Present: Mr. R. H. Mytton).—"The presumptive proof of the offence charged against the prisoner is, as observed by the sessions judge, very strong; and he has, in my opinion, properly convicted him of administering poisonous drugs with intent to steal.

"Contrary, however, to the provisions of Clause 4, Section VIII. Regulation XVII. of 1817, he has recommended that the prisoner be imprisoned for a limited period. The law in question prescribes transportation for life as the punishment for the crime of which the prisoner is convicted, unless there be any mitigating circumstances. None are brought to notice by the judge, nor can I discover any from the papers. The prisoner is therefore sentenced to imprisonment for life in transportation. The continued stupor of the prosecutor and his consequent inability to give a deposition for three days, accounts in some measure for the detention of the prisoner at the thanna."

1852.

July 3.

Case of
LOOTAWUN
DOBBY.

PRESENT:

A. J. M. MILLS, Esq., *Officiating Judge.*

GOVERNMENT

versus

SHEIKH KHODARUHUM (No. 9), KANAIE MANDAIE (No. 10), KOMICK MANDAIE (No. 11), SHEIKH FOJOO (No. 12), DOST MAHOMED (No. 13), SHEIKH JOHEER (No. 14), WODAH MANDAIE (No. 15), RAJA MAHOMED (No. 16), SHEIKH NEELAH (No. 17) AND HAROO MANDAIE (No. 18).

1852.

July 3.

Case of
SHEIKH KHO-
DARUHUM and
others.

The prison-
ers' plea in
appeal, that
their confes-
sions had been
obtained by
unfair means,
rejected. Con-
viction affirm-
ed, on the
strength of
their confes-
sions and de-
livery of sto-
len property
by them.

CRIME CHARGED.—1st count, theft by opening the door of the house of Bechooram Sha, and stealing therefrom cash and property valued at rupees 554-15-17½ *gundahs*; and 2nd count, knowingly receiving and possessing property obtained by the above theft.

CRIME ESTABLISHED.—Theft and knowingly receiving property obtained thereby.

Committing Officer, Mr. A. Abercrombie, assistant, exercising the powers of joint magistrate, Jumalpoore, Mymensing.

Tried before Mr. R. E. Cunliffe, sessions judge of Mymensing, on the 12th May 1852.

Remarks by the sessions judge.—“The owner of the property stolen is a boy of about nine or ten years of age, with whom an old man, witness No. 26, lived, of which the prisoners were aware, from prisoners Nos. 10 and 18 having shortly before been in his service, and took advantage of it to rob him. They opened the door and found witness No. 26 lying on the chest, and after tying him broke it open and carried off every thing in it; suspicion being attached to Nos. 9, 10 and 18, by the owner, the two former were apprehended, and in their confessions implicated the others. All the prisoners confessed in the Mofussil and before the assistant magistrate, and gave up portions of the property, a good deal of which was recovered. Before this court they all denied, and alleged the confessions had been extorted, and the property pointed out in places shown them by the police, and named witnesses to character, who gave evidence in their favor. No. 10 also alleged that two of his cows had been taken by the owner of the property, of which his witnesses denied all knowledge. The *futwa* of the law officer convicts all the prisoners of theft and knowingly receiving property obtained thereby; in which I concurred, and have passed a severer sentence upon Nos. 9 and 12, as the former had been before convicted of dacoity, and the latter of burglary.”

Sentence passed by the lower court.—Nos. 9 and 12, each seven (7) years' imprisonment, with labor in irons, and Nos. 10, 11, 13, 14, 15, 16, 17 and 18, each five (5) years' imprisonment, with labor in irons.

Remarks by the Nizamut Adawlut.—(Present: Mr. A. J. M. Mills).—"The prisoners Nos. 9, 11, 13, 14, 15 and 16, have appealed. They rest their appeal on the defence they made at the trial, viz., that their confessions before the police as well as before the assistant magistrate were obtained by unfair means; but this plea is in no way supported. In corroboration of the full confessions to the police and to the assistant, which have been duly attested, there is satisfactory evidence to each of the prisoners giving up portions of the stolen property; and I see no ground for interfering with the conviction and sentence in regard to any of the prisoners."

PRESENT:

SIR R. BARLOW, BART., *Judge*.

SHEIKH HAMUD MUNDUL

versus

NEWAZ KHAN (No. 5), KHOAZ KHAN (No. 6), KOOSHUL KHAN (No. 7) AND MOSTUB KHAN (No. 8).

CRIME CHARGED.—No. 5, wilful murder of Sheikh Nufjoo Mundul, and assault of Nocoree Mundul, and Nos. 6, 7 and 8, accomplices in the above murder.

CRIME ESTABLISHED.—No. 5, culpable homicide, and Nos. 6, 7 and 8, accomplices in the above culpable homicide.

Committing Officer, Mr. A. Abercrombie, assistant exercising the powers of joint magistrate, Jumalpoore, Mymensing.

Tried before Mr. R. E. Cunliffe, sessions judge of Mymensing, on the 6th May 1852.

Remarks by the sessions judge.—"The deceased and prisoners are *ryots* of the same zemindar and their *jotes* adjoin. A dispute having arisen about boundaries, it was settled about two months before this occurrence by the naib, and an *ail* laid down as the boundary, notwithstanding which, the prisoners on the day in question, overstepping the boundary, began to plough and sow the deceased's land; on which witness No. 1 remonstrating, was beaten and knocked down with a blow on the chest with a wooden mallet used for breaking clods, and No. 5, struck the deceased a blow with a mallet on the head, by which he was rendered senseless till his death, next day, and which the evidence of the civil surgeon shows to have been the cause of his death. The others also aided and abetted No. 5, by beating the deceased and wit-

1852.

July 3.

Case of
SHEIKH KHO-
DARHUUM and
others.

1852.

July 3.

Case of
NEWAZ KHAN
and others.

The prisoners killed the deceased in a quarrel regarding land. The court considered the sentence passed upon them by the sessions judge, inadequate.

1852.

July 3.

 Case of
 NEWAZ KHAN
 and others.

ness No. 1, with sticks. No. 5, in his defence in the foudjaree and this court, alleged he had been attacked by twenty or twenty-five persons on the prosecutor's side, because two of his cows went into their crop, and as he and the deceased were wrestling together, the prosecutor came and struck at him with the mallet, but the blow, missing him, fell upon the deceased's head, and named witnesses to prove it; who knew nothing about it. Indeed one of them said he had struck the deceased, Nos. 6 and 8 said, they had been driven off their land by prosecutor's party, and their ploughs, &c. looted, and named witnesses to prove it; who only saw them running away, but no one driving them away. No. 7 pleaded an *alibi*, and his witnesses deposed in his favor, but credit was not attached to them. The *fatwa* of the law officer convicts No. 5 of culpable homicide, and Nos. 6, 7 and 8, of being accomplices therein, in which I concurred."

Sentence passed by the lower court.—Four (4) years' imprisonment, without irons, and a fine of rupees fifty (50), or labor, and Nos. 6, 7 and 8, each one (1) year's imprisonment, without irons, and a fine of rupees twenty-five (25), or labor.

Remarks by the Nizamut Adawlut.—(Present: Sir R. Barlow, Bart.)—"The deceased and the prisoners, as well as the prosecutor, are all *ryots* of one zemindar. They had disputes about some land, which the zemindar's naib settled. Notwithstanding this, the prisoners endeavored to take possession of the land and beat the deceased and Nocoree, a witness, on their remonstrating. Prisoner No. 5 is fully proved to have given the blow which was the cause of Nujjoo's death. The other prisoners joined in the assault. Under the circumstances of the case the prisoners have not been adequately punished; but this is an appeal, and punishment cannot be enhanced. The defence fails altogether to prove *alibi*. Sentence confirmed."

PRESENT:

R. H. MYTTON, Esq., *Officiating Judge.*

RAMDIAL TELY

versus

AKUL (No. 3), DOOBER (No. 4), MUNGUR (No. 5),
• DHIRAJ (No. 6), RUGHOO SINGH (No. 7), DHIRA
(No. 8) AND MUNNOQ (No. 9).

CRIME CHARGED.—1st count, dacoity and plunder of property valued at rupees 857-15-6, attended with beating; 2nd count, having in their possession part of the above plundered property valued at rupees 33-5-6, well knowing it to have been plundered; and 3rd count, belonging to a gang of dacoits within the meaning of Section I., Act XXIV. of 1843.

CRIME ESTABLISHED.—Dacoity and plunder of property valued at rupees 857-15-6.

Committing Officer, Mr. F. C. Fowle, magistrate of Behar.

Tried before Mr. T. Sandys, sessions judge of Behar, on the 5th April 1852.

Remarks by the sessions judge.—“On the night of 16th January last, the prosecutor’s house was attacked by a strong band of dacoits, having their persons disguised and disfigured, who violently obtaining information from the prosecutor where his money was, plundered him of it, as well as such household property as they could lay hands on, consisting chiefly of clothes and utensils.

“Information was duly lodged at the thanna, and the prosecutor’s suspicions as well as the police inquiries were widely continued in different quarters for upwards of two weeks without the slightest success. The apprehension in the interim of one Teyja Choiya by the road side, on the 20th January, on the prosecutor’s accusation that he recognised the turban he wore as his own, is also in like character. The magistrate very properly released Teyja, his examination of the prosecutor resulting in showing the worthlessness of this accusation.

“It was not until the 2nd February following, that police and prosecutor were helped out of the dilemma by Joora Khan (witness No. 11), who (No. 54) gave very qualified information, obtained under very questionable circumstances, as to his meeting Rughoo Singh (prisoner No. 7) who, acquainting him with the proposed expedition, and naming Dhira Korree (prisoner No. 8) and Dhiraj (prisoner No. 6) and three gowalas of Koodrasin as forming the gang, wanted him to join them, which he declined, and now on hearing of the occurrence he reported it, suspecting it to have been their work.

1852.

July 3.

Case of
AKUL and
others.

An appeal from prisoners, convicted of dacoity, on the ground, that their confessions were extorted under influence of *gunja*, rejected, the confessions themselves belying the allegation.

1852.

July 3.
Case of
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"On this the apprehension of Akul Gowala (prisoner No. 3), Doober (prisoner No. 4,) Mungur (prisoner No. 5), the three Koodrasin gowalas, first took place on the 3rd of February, *vide* darogah's report 3rd February last (No. 53). They at once confessed, implicating each other, and naming others then at large; Rughoo Singh (prisoner No. 7), as having planned the expedition, and Dhiraj (prisoner No. 6) and Akul (prisoner No. 3), naming Dhira (prisoner No. 8) as having been present; at the same time pointing out certain articles of the plundered property, Nos. 2 to 8 inclusive, concealed amongst the crops on the sand-bed of a stream. The apprehension of the other prisoners including Munnoo (prisoner No. 9), followed the next day, the 4th *idem*, who, in like manner, confessed, each implicating one another, and pointing out other articles of the plundered property, from Nos. 7 to 35 inclusive, delivered up either out of Dhiraj's house (prisoner No. 6), from amongst the corn-fields, a dung-heap, and an old well. Each prisoner repeated his confession before the magistrate, either naming Rughoo Singh (prisoner No. 7) or Jorra Khan (witness No. 11) as their leader or joint leaders. Revoking their confessions, each of the prisoners pleaded 'not guilty' before this court. Akul, Doober and Mungur, set up no particular defence, whilst Rughoo Singh's defence confirmed particulars on record to be further noticed: at the same-time as well as Dhiraj's, Dhira's and Munnoo's, accounting for their confessions before the magistrate through unconsciousness or having been drugged. They called witnesses to character, as also Rughoo, Dhira and Munnoo to *alibis*; but they testify to nothing in their favor. None of the prisoners, however, appear to have been heretofore apprehended.

"Two laborers, Lila Gowala (witness No. 1) and Chintamun (witness No. 2), who witnessed the attack, were in the habit of sleeping on the prosecutor's premises, and they are brought forward to recognize some of the prisoners; but the circumstances already narrated, the prosecutor's and police's helplessness for two weeks subsequent to the dacoity until assisted by Joora Khan, sufficiently evince that neither prosecutor or these two eye-witnesses could have recognised any one of the dacoits at the time of the occurrence, owing to their disguise, and being strangers, though all the prisoners reside in villages in the neighbourhood at no great distance. Lila's (witness No. 1) evidence at the thanna is only forthcoming (No. 117) dated 17th January, and is tantamount to his having been unable to recognize any one, though he pretended to give a personal description of four dacoits, but of the vaguest kind.

"Rughoo Singh (prisoner No. 7) had been originally suspected; his house unsuccessfully searched, his defence taken, (No. 95) 27th January last, and for want of proof released on

security. There is a report of the darogah's (No. 52) of 30th idem, noting that he had sent for the inmates of the prosecutor's house, for the purpose of ascertaining whether they could recognize him, and on their arrival on the 28th, Rughoo was not to be found. The darogah thereon expressed his suspicions of Rughoo, whose security, finding out that he had gone towards Gyah, subsequently secured his attendance. Rughoo himself adopts all the circumstances thus on record in his defence before this court, and accounts for his absence from having proceeded to Gyah for the purpose of complaining to the magistrate, whom he was in search of when laid hold of by people sent after him by his security, Deal Singh. But this is at variance to his answer to the magistrate's question, why he had ran away? he replied, 'to visit his connexions at Gyah.'

"The decision of this case is not free from difficulty. I regard the evidence as to any recognition of the dacoits during the attack as worthless. Joorra Khan's information, as well as the recovery of the plundered property, must be looked on with suspicion; but Joorra Khan's information, doubtless led to the gang being taken by surprise, and, in Rughoo Singh's absence, to the first party, Akul, Doober, and Mungur, the three Koodrasin gowalas, confessing out of revenge for such treachery, and in so acting, causing the articles of plundered property to be put where they were found in support of their confessions, for being prepared to do the one they would scarcely hesitate at the other. It is difficult to believe that many of the articles of plundered property could have been left concealed for so long a period in the fields. The confessions of the first party were naturally followed by those of the second party, the following day, and this state of things in like manner equally lasted before the magistrate. I rest the conviction of the prisoners both for the dacoity and their belonging to a gang of dacoits, within the meaning of Section I. Act XXIV. of 1843, on their own confessions, which, weighing all the circumstances of the case, I should not be warranted in rejecting. They show some internal evidence of truth, and putting faith in Rughoo Singh's confessions, there is the less difficulty in relying on those of the rest. Rughoo Singh's confessions are supported by his own conduct. His reply to the magistrate belies his pretence of having proceeded to Gyah for the purpose of complaining. He deliberately signed his confessions in the witnesses' presence, both before the police and magistrate, in good Hindee characters, which at once disposes of his fellow companions Dhiraj, Dhera and Munnoo's frivolous, unsupported and incredible pretence of their unconscious confessions before the magistrate. Rughoo Singh's connexion with the whole record from first to last is quite in keeping with his bearing

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before this court and his fellow prisoners naming him as their leader. It is improbable, too, that the police could have exercised any control over the circumstances of the case generally in the lapse of time which brought them about, and which seem to link together too naturally to have admitted of tampering or concoction.

“ Convicting all the prisoners therefore, on their own confessions, of the dacoity, which in all its features was doubtless perpetrated by a skilled gang of dacoits, they have been sentenced as within.”

Sentence passed by the lower court.—No. 7, ten (10) years' imprisonment, and Nos. 3, 4, 5, 6, 8 and 9, each seven (7) years' imprisonment, all with labor and irons in banishment.

Remarks by the Nizamut Adawlut.—(Present: Mr. R. H. Mytton.)—“ The prisoners appeal, alleging that their confessions even before the magistrate were extorted, while they were under the influence of *gunja*, and pointing out the improbability of the evidence to recognition being true.

“ The confessions themselves disprove the first allegation. They are not statements such as would have been given by persons in a state of intoxication; and being duly verified, are sufficient to support the conviction.

“ Evidence to recognition in dacoity cases is rarely to be trusted. In the present, that which has been adduced is, under the circumstances, utterly untrustworthy. But independent of it, there is ample proof against the prisoners. Their appeal is rejected.”

PRESENT :

SIR R. BARLOW, BART., Judge.

MUSST. THUNDAH BEWAH

versus

SHEIKH GURREEBOOLLAH (No. 20), BAKHURDEE
• (No. 21), BARAMDEE (No. 22), SHEIKH LAKHOO
(No. 23), PUNNAOOLLAH (No. 24), SHEIKH ASSAM
(No. 25) AND SHEIKH BANOO MUNDUL (No. 26).

CRIME CHARGED.—1st count, Nos. 20 to 23, wilful murder of Bengoo Mundul; 2nd count, Nos. 24 to 26, accessories after the fact to the above murder; and 3rd count, privy to the above murder.

Committing Officer, Mr. A. Abercrombie, officiating magistrate of Mymensing.

Tried before Mr. R. E. Cunliffe, sessions judge of Mymensing, on the 21st May 1852.

Remarks by the sessions judge.—“From the evidence of the witnesses, and the confessions of Nos. 20 and 21, in the Mofussil and before the officiating magistrate, and of Nos. 20, 21 and 22, in the Mofussil, it appears that No. 24 (acquitted), had caught No. 21, brother of Nos. 20 and 22, and No. 23, their servant, stealing his cucumbers, and had charged them with it before No. 26 (acquitted) and the villagers; when it was determined by all, except the deceased, to settle it amicably, without reporting it to the police. The deceased refused to agree in that arrangement, and said he would report it himself. From the confessions and evidence of the witnesses and prosecutrix, it is evident that ill-will existed between No. 20 and his brothers and deceased, as the latter had shortly before complained to the *talookdar* that No. 20 had beat his servant and brought a *peadah*, to whom he had to pay four annas, and on other grounds.

“On the night in question he had gone to No. 26's house and as he was returning, about one *pukur* of the night, he was waylaid by No. 20, and as alleged in his confession by No. 23, No. 20 held him by the throat while the other beat him; and at times No. 23 held him while No. 20 beat him, and No. 22 coming, he also gave him three kicks; they then took him to a field of grass where, he died soon after, when No. 21 was called, and they took the body and threw it down in another village, in which there were disputes between two parties, in the hopes that it would be supposed deceased had been killed in some affray.

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and others.

The Nizamut Adawlut, on a trial referred regarding only two of the prisoners, passed at the same time, their orders in affirmation of the sentence awarded by the sessions judge to two others.

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"The evidence of the civil surgeon shows, that death was caused by strangulation, and that there was a severe bruise on the back and three ribs broken on the right side.

"Before this court Nos. 20, 21 and 22, denied the charge, and alleged beating by the police, and No. 23, enmity with the above prisoners on account of non-payment of wages; no part of which could the prisoners prove. The *futwa* of the law officer convicts Nos. 20, 21, 22 and 23, of culpable homicide, and Nos. 24, 25 and 26, entitled to acquittal; in which I concurred, as there was no evidence whatever against them beyond implication in the confessions. I concurred also in the conviction of Nos. 20 and 22, of culpable homicide, and would convict No. 21 of being an accessory after the fact, as he came and assisted in the removal of the body, and there is no proof of his being concerned in any way in the assault, and would recommend a sentence of two (2) years' imprisonment and rupees fifty (50) fine in lieu of labor. Nos. 20 and 22 have been sentenced to seven (7) years' imprisonment, with labor in irons. No. 23, I consider must be acquitted, for there is no evidence whatever against him beyond implication in the confessions of Nos. 20, 21 and 22, and which, unsupported by corroborating circumstances, cannot affect him."

Remarks by the Nizamut Adawlut.—(Present: Sir R. Barlow, Bart.)—"I concur in the conviction of the prisoners Nos. 20, 21 and 22, and in the sentences passed upon them severally by the sessions judge. There is no evidence against the prisoner No. 23, who must be released. His implication in the confessions of the other prisoners, is not legal evidence against him."

PRESENT:

A. J. M. MILLS, Esq., *Officiating Judge.*

RAM CHURN SINGH

versus

SOOBKURRUN SINGH ALIAS JUYKURRUN SINGH.

•CRIME CHARGED.—1st count, murder of Ram Sahay; 2nd count, beating the deceased with intent to murder.

CRIME ESTABLISHED.—Culpable homicide of Ram Sahay.

Committing Officer, Mr. F. C. Fowle, magistrate of Behar.

Tried before Mr. T. Sandys, sessions judge of Behar, on the 24th April 1852.

Remarks by the sessions judge.—“On the 28th September 1847, a bullock belonging to Tiluck Singh, witness No. 1, was caught by the deceased grazing his field, which he seized and took to Baloo Singh's (witness No. 17) house, and there left tied up. Tiluck Singh unfastened and took it away; on which the deceased proceeding to Radha Pandeh (witness No. 5) the then gomashita of the village, whose quarters were at Oosur, more than a mile distant from Akoomree, where the occurrence took place, and making his complaint, returned to Akoomree, accompanied by Nund Pandeh Burrayl, after night-fall, for the purpose of taking Tiluck Singh before the gomashita.

“The deceased, Tiluck Singh and the prisoner then lived close together, and whilst the party were about accompanying Nund Pandeh, an altercation commenced between the deceased and Tiluck Singh, abuse was mutually exchanged, and they had reached Himut Jolaha's (witness No. 2) next door to the prisoner's, when the prisoner coming out and joining in the dispute, snatched the deceased's *lattee* out of his hands and struck him one violent blow on the head, of which he lingered, senseless, and died a few hours afterwards. The Mofussil inquest, as also the autopsy, correspond thereto, ‘a wound being found on ‘the left side of the head, and the skull fractured transversely,’ without any other mark or signs of violence.

“The prisoner absconded, but Tiluck Singh was at once apprehended and committed to the sessions ‘as an accomplice and ‘privy to the murder;’ but acquitted under the following remarks (*vide* acquittal statement for December 1847) ‘no proof ‘was adduced for the conviction of the prisoner, either as an ‘accomplice or accessory. He is the brother of the deceased's ‘wife, and the witnesses for the prosecution depose to their ‘having seen him crying after the deceased had been struck ‘with a *lattee* (by one Soobkurrin Singh, not apprehended,) ‘which killed him. The witnesses for the defence also prove ‘the innocence of the prisoner.’

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The prisoner's plea that he was not the person who killed the deceased, held to be disproved.

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Case of
SOOBKURRUN
SINGH *alias*
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"The prisoner's apprehension in the Shahabad district on 2nd December last, through some candidate for employment, occasions the present trial in which Tiluck Singh now appears as witness in chief; consequent on the witnesses in chief of the original trial, *viz.*, the Burrayl, Nund Pandeh (witness No. 1), Churun Singh (witness No. 2) and Adheen Chowkeedar (witness No. 9 of that trial) adopting the pretence set up by the prisoner, having been committed for perjury. This necessarily weakens the present prosecution, the testimony of the remaining witnesses of the original trial (Noher Singh, witness No. 6, in the *interim* having deceased) Himut Jolaha (witness No. 3) Gunes Singh (witness No. 4) and Jeoo Narrain Singh (witness No. 9) extending to nothing beyond finding the deceased struck down, and the by-standers declaring that the prisoner had done it. Radha Pandeh (witness No. 8) merely confirmed his having deputed Nund Pandeh consequent on the deceased's complaint. On the present trial, therefore, the only eye-witnesses are Tiluck Singh and Baloo Singh (witness No. 12 for the defence of the original trial, and now witness No. 17,) the evidence of the remaining witnesses for the defence of the original trial, *viz.*, Nos. 10, 11 and 13, being of a similar kind to that above noted for Nos. 3, 4 and 7, though it may be observed of several of these witnesses that their original evidences are so cursorily recorded as to make them unequal to convict them of perjury for having originally stated what may have been accepted as the testimony of eye-witnesses, and which they now turn into mere hearsay, a tampering with justice and their consciences not unusual in cases in which Rajpoots or high castes, are concerned, or as has been observed in other districts 'as too frequently the case when all the parties charged are not apprehended and committed at the same time.'

"Tiluck Singh and Baloo Singh both depose to the prisoner's having struck the deceased under the circumstances already narrated.

"The prisoner has invariably pleaded 'not guilty,' with a difference only as regarded his parentage, setting up the pretence that he was Juykurrun, son of Oodhee Singh, and not Soobkurrun, son of Soodhee Singh; acknowledging that he had originally resided at Akoormee, but had left it some seven years ago for Busooharree, in the Shahabad district, where he was apprehended. He called several witnesses in support of the personation thus set up, and has been aided therein by the three chief witnesses of the original trial, as already noticed.

"The *futwa* of the law officer, considering the prisoner's defence disproved, and his being generally recognized as the Soobkurrun who struck the deceased, convicts him of culpable homicide, and declares him liable to punishment for the price of blood by *deeyut*.

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"The prisoner's identity as Soobkurrin is undoubted. Excepting Churrin Singh and the chowkeedar Adheen, there is only one other resident of Akoormee, Kheroo Teywarree (witness No. 8) a worthless old beggar on his own showing, who pretends that any Juykurrin Singh ever resided at Akoormee; every one else of that village swears to their recognition of the prisoner as Soobkurrin, son of Soodhee Singh, and that no Juykurrin or Oodee Singh ever resided there. Even Kheroo Teywarree equivocated;—before the magistrate he recognized the prisoner as Juykurrin; before this court he suddenly became too weak of sight to see him. The prisoner's personation of Juykurrin is in itself fictitious. Before the magistrate of Shahabad he at least avowed his parentage as son of Soodhee, and before the magistrate of Gyah he gave different and contradictory accounts of his connexions, which local inquiry proved to be false; moreover, if Juykurrin is his real instead of his feigned name, it would have been easy for him to have proved it by unexceptionable evidence; whereas he has adopted the very opposite course. He has never ventured to produce a single relative or connexion, as would have been most natural in support of such a plea had it been a true one; but, on the contrary, his witnesses, whom he declined examining, are manifestly 'chance persons,' got up for the occasion, whose testimony, if it does not disprove, cannot support it. The worthlessness of Kheroo Teywarree's evidence has been already shown. The prisoner called only one other resident of Akoormee, Simbhul Singh (witness No. 10) who has always consistently recognized the prisoner as Soobkurrin. Deindyal Singh (witness No. 12)* and Achumbit (witness No. 14) residents of Shahabad, know nothing further of the prisoner than his having resided in their village under the name of Juykurrin, without friends or relatives; and the only remaining witness Achumbit (witness No. 9), a Teywarree also, not even the prisoner's fellow-caste, and residing in a village two miles distant from Akoormee, swore to his being Juykurrin, but had never met his father, whose name he only knew from the prisoner's having mentioned it, though he had not met him the last eight years. He was unable to name any of Juykurrin's relatives at Akoormee.

"Regarding, therefore, the prisoner's identity as Soobkurrin established, the crime for which he stands arraigned remains for consideration.

"Lapse of time, the perjury of the two eye-witnesses, Nund Pandeh and Churrin Singh; the hearsay evidence of most of the witnesses who reached the spot after the occurrence had taken place; the *autrefois acquit* of the now witness in chief, Tiluck Singh, throw particular obstacles in the way of the present prosecution, though mostly of the prisoner's own making, and

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which may therefore justly tell against him. His evasion of the ends of justice has been wilful, for, as a resident of Akoormee, he could not have been ignorant of the deceased's death by violence, his being accused and proclaimed thereon as an offender, for, strange to say, according to himself, as well as the record ever since his disappearance from Akoormee, he had been quietly residing during many years past in the Shahabad district.

"There are also some circumstances on record for which at this date it would be in vain to expect any complete explanation. The deceased's *lattee*, with which it is said the prisoner struck the deceased, was originally forwarded in a very loose manner as found in Tiluck Singh's house, and in his defence at the thanna, No. 10, 30th September 1847, when required to explain this, is recorded to have said 'that the prisoner had given it to Juthoo Singh, his, Tiluck's, own brother, who had put it there.' Of this he has now no recollection. I do not feel satisfied but that this is a shallow police concoction to help the forms of our courts, as under all the circumstances of the case, the object is altogether wanting why either Tiluck Singh, Juthoo Singh, or the prisoner, should have taken such pains to preserve so common an article, which, if worth notice at all, either one of them would surely have destroyed. On the same occasion also, Tiluck Singh is recorded to have said that he did not know whether the prisoner or Juthoo Singh had struck the deceased, but he as immediately added that when struck down the prisoner got across the deceased's body until the by-standers interfered. The prosecutor also and Adheen the chowkeedar, first hastily reported Tiluck Singh as the person who had struck the deceased; but this was at once corrected by them, on their return to the village, when the local inquiry commenced. Strange to say also, Juthoo Singh, as admitted by Tiluck Singh, disappeared on the occasion of Ram Sahay Singh's death, and has never been heard of since. These discrepancies are not altogether irreconcilable in themselves, and faith being placed in the circumstances of the occurrence as generally deposed to, and which it may be observed general testimony, whether for the prosecution or the defence during this and the former trial, has always consistently upheld, are immaterial. It has been elicited on examination, that the deceased was a new resident of Akoormee, he had only recently obtained cultivation there, and being of some substance, and possibly a favorite of the gomashtha Radha (witness No. 5), as his and the putwarree's (Punnoo, witness No. 6,) questionable and unwilling testimony gives reason to suspect, was a rising cultivator, who would naturally have been regarded as an interloper by all the old resident cultivators, such as Tiluck Singh, the other witnesses, and the prisoner in particular, who it appears was as much a decaying cultivator as the deceased was a rising one, and who had

but recently obtained a large slice of the prisoner's original cultivation. This naturally accounts for the deceased's making so much of a trifling grazing, his having Tiluck Singh apprehended through the Burrayl, Nund Pandeh, and on the altercation, such a measure brought on the prisoner's joining in, on the score of his own personal grievances, and from words to blows, assaulting the deceased. Under this view the circumstances of the case naturally tally, and support the prosecution. This gives the offence somewhat of a malicious coloring, but by all accounts altogether unpremeditated, as is best vouched by the fact of the prisoner's snatching the stick with which he beat the deceased out of the deceased's own hands. I regard the assault, inexcusable at the best, as having originated in a general village squabble, and in the broil becoming personal to the prisoner owing to his own greater grievance. Thus regarded, I place every reliance on Tiluck Singh's and Baloo Singh's testimony, always consistently given under the varying and trying ordeals of both trials, supported as it is also by general testimony and the record of the original trial. Concurring, therefore, in convicting the prisoner of the culpable homicide of Ram Sahay Singh, and proof falling short as to its having been of an aggravated character, meriting higher punishment, he has been sentenced as within."

Sentence passed by the lower court.—Seven (7) years' imprisonment, with labor and irons.

Remarks by the Nizamut Adawlut.—(Present : Mr. A. J. M. Mills.)—"The prisoner has appealed. His defence is that he is not Sookurrun Singh, the person who killed the deceased. He has been a fugitive from justice since 1847 ; and I agree with the sessions judge in regarding the prisoner's identity as clearly and satisfactorily established. The evidence of Tiluck Singh and Baloo Singh is direct and consistent, and is supported by the general facts of the case. I confirm the conviction and sentence."

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SINGH.

PRESENT :

R. H. MYTTON, Esq., *Officiating Judge.*

GOVERNMENT

versus

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Case of
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The Nizamut Adawlut refused to mitigate a sentence of imprisonment for three years passed on a prisoner for perjury, although recommended by the sessions judge on the ground of ignorance, and the trivial nature of the case in which the perjury was committed.

CRIME CHARGED.—Perjury.

Committing Officer, Mr. A. E. Russell, officiating magistrate of Purnea.

Tried before Mr. F. Lowth, sessions judge of Purnea, on the 20th May 1852.

Remarks by the sessions judge.—“ The prisoner pleaded ‘guilty,’ but urged that Bhinkoo, the father of Karamut, the defendant in the trial before the fonjdaree court, had persuaded him to give evidence in favor of his son, and that he had done so through fear.

“ The original case in which the prisoner was called upon to give evidence was one of simple assault. Before the law officer in the first instance he deposed to his being present with the prosecutor and accused, and that the accused neither beat the prosecutor nor plundered his tobacco; on the same day, however, on being called up for cross-examination before the same officer, he declared that he did not know the prosecutor, that Bhinkoo, the father of the accused, told him to give evidence, which he accordingly came to give; that Bhinkoo said his son did not plunder the tobacco, ‘you must give this evidence,’ he accordingly so deposed and stated that he saw nothing with his own eyes. That the prisoner took the solemn declaration instead of an oath was duly proved by the evidence of the witnesses for the prosecution. The depositions made by him were also read over and verified as having been recorded in the presence of the witnesses by the prisoner, of his own accord.

“ The jury returned a verdict of ‘guilty’ against the prisoner.

“ In this verdict I concur; and the prisoner has been accordingly convicted and sentenced to the lowest punishment which the law allows me to award, *viz.*, three (3) years’ imprisonment. I am however of opinion, considering the trivial nature of the case in which he was called on to give evidence, and the evidently stupid and ignorant disposition of the prisoner, and that he was from his manner a person most likely to be easily imposed upon and induced to give contradictory evidence, that the sentence should be reduced, and the prisoner sentenced to one (1) year’s imprisonment, with labor, from the date of the sentence of this court.”

Remarks by the Nizamut Adawlut.—(Present: Mr. R. H. Mytton.)—"The grounds for mitigation adduced are not sufficient to justify it.

"The prisoner does not even allege that he acted under any compulsion, threats, or strong inducement, to perjure himself.

"He was asked to depose that he was in the company of two persons at a certain time, and that no offence, as charged, was committed by one against the other, and he did so, although one of those parties was not even known to him, and his whole statement was a fabrication.

"If the prisoner was so ignorant and stupid as not to know that it was wrong to state an untruth, the moment after he had called God to witness that he would speak the truth, he must have been an idiot, and should have been acquitted altogether. That the offence with which the person stood charged, whom he tried to get off by his perjury, was a trivial one, does not essentially extenuate his crime. It shows, on the contrary, that he was willing to swear falsely on the most paltry occasion.

"The recommendation of the sessions judge cannot be complied with."

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Case of
GOLAB.

PRESENT.

W. B. JACKSON, Esq., Judge.

GOKOOL PAUL

versus

BANSEË SHEIKH.

CRIME CHARGED.—1st count, dacoity in the house of Bindoo Basinee Debea, employer of the prosecutor; 2nd count, accomplice in the said crime; and 3rd count, privy to the above-mentioned dacoity.

CRIME ESTABLISHED.—Dacoity in the house of the prosecutor's mistress.

Committing Officer, Mr. C. F. Montresor, magistrate of Nuddea.

Tried before Mr. J. C. Brown, sessions judge of Nuddea, on the 25th May 1852.

Remarks by the sessions judge.—"The prosecutor's house was attacked in this case by a party of dacoits, who finding the door closed, commenced breaking it; he called from within for assistance, and the eye-witnesses and others went to the spot, when the dacoits, fearing they would be overpowered by superior numbers, decamped, but not until the prisoner and others were identified by the light of *mussals*, while standing about the prosecutor's door.

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Case of

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SHEIKH.

Conviction
of the prison-
er on a charge
of dacoity,
affirmed.

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Case of
BANSEE
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"The prisoner confessed before the darogah and the magistrate that he was on board a boat, when certain persons, whom he named, called him to accompany them to commit a dacoity, but that he did not go; but that afterwards, when the party returned disappointed, having been driven off from the prosecutor's house, he went and joined them. This is all a *ruse* of his, as the prosecutor and witnesses have sworn to his having been one of the dacoits. He named two persons to prove his defence, but they swore they had neither seen him nor knew where he was during the dacoity."

Sentence passed by the lower court.—Seven (7) years' imprisonment, and two (2) years' in lieu of corporal punishment, aggregate, nine (9) years' imprisonment, with labor in irons.

Remarks by the Nizamut Adawlut.—(Present: Mr. W. B. Jackson.)—"I see no reason to interfere with the sentence on the prisoner Bansee Sheikh."

PRESENT:

W. B. JACKSON, Esq., Judge.

R. H. MYTTON, Esq., Officiating Judge.

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versus

ZUKKEE SHEIKH CHOWKEEDAR.

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Case of
ZUKKEE
SHEIKH
CHOWKEE-
DAR.

CRIME CHARGED.—Attempting to murder Mr. Thomas J. Kenny, by mixing poison with his tea.

Committing Officer, Mr. J. J. Ward, joint magistrate of Pubna, Rajshahye.

Tried before Mr. G. C. Cheap, sessions judge of Rajshahye, on the 29th March 1852.

Remarks by the sessions judge.—"The reason for this reference is that the *futwa* declares no offence to have been committed, and on that account and for other reasons, which I shall notice hereafter, declares the prisoner entitled to his release; while in my opinion, an offence was committed which rendered the prisoner liable to punishment; but as he had been already punished, and most severely, by the person whom he is charged with attempting to murder, I doubt if this court can award any further punishment.

"I now proceed to give an abstract of the evidence taken in this court.

"In the absence of Mr. Kenny, (who it is reported has proceeded to Europe,) the Government was made prosecutor for the occasion.

"The prisoner pleaded 'not guilty'.

* Attempt to murder by poison. Sentence imprisonment for life.

Chastisement of the offender by the intended victim, does not preclude the criminal authorities from punishing.

"The first witness Sonaoollah, kidmutgar, deposed, that in the Bengallee month of Bhadoon last, on a Tuesday evening, he was preparing some tea for his master in the kitchen, when the prisoner opened the lid of the tea-pot and put something into it. On seeing him do this, he seized hold of his hand, and when asking what he had put in, Mochai came to the kitchen and he told him what the prisoner had done. On looking into the tea-pot, he saw some white powder in the tea leaves, which he took out and showed to the prisoner; and on their making an uproar, Mr. Kenny came from the house to the kitchen, when he repeated to him what had occurred. The powder was then shown to Ramdyal jemadar, who had come to the kitchen, and the *sahib* (Mr. Kenny), having given the prisoner four or five blows with a rattan that he took from Ramdyal, made him over to the said Ramdyal to watch or guard.

"Mochai, the other kidmutgar, and also Ramdyal jemadar, confirmed the above statements, as far as they were present; and both deposed that the prisoner was punished with a rattan by Mr. Kenny. Ramdyal jemadar further deposed, that when in his custody (or the next morning,) the prisoner, on being questioned, said that of the poison he had put into the tea-pot, he had left some in the garden, and he (witness) was to inform the *sahib* (Mr. Kenny), and he would produce it. That he mentioned this to Mr. Kenny, when he, Mr. Tripp, witness Arman burkundauz and the prisoner went together, and behind the kitchen, under a broken board, the prisoner produced a *kiltwa* (or small round box), and gave it to Mr. Kenny, who took it away. The prisoner was then made over to Arman burkundauz.

"Arman confirms the above in every particular.

"The next witness, Mr. Benjamin Tripp, an assistant of Mr. Kenny's, deposed, that on his coming to the *duftarkhanah* at Salgurmudea, on the morning of the 27th August, he was informed by Mr. Kenny of what had occurred the night before. After a short time the prisoner sent word through one of the servants that he would confess and point out where he had hidden the poison. He was then sent for, and produced a box behind the cook-room, near a broken door and some jungle, and gave it into Mr. Kenny's hands. The prisoner at the same time admitted he had taken a little out of the box and put it into the tea-pot the night before. The prisoner call the contents *beese* (the Bengalee term for poison).

"Mr. Ellis, the sub-assistant surgeon, deposed that he examined both a paper and box (the one on the table); the former contained tea leaves, and the box simply a powder, and the powder contained in both was arsenic. The powder was mixed up with the leaves.

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"The tea-leaves, as well as the box containing the powder, were sent down to Dr. O'Shaughnessy, the chemical examiner of Government, by the joint magistrate; and it will be seen from his original letter (filed with the record of this case,) that he reported the white powder received was arsenic, and the leaves and sediment on analysis were found to contain large quantities of the same poison.

"There only remains the confession of the prisoner made in the Mofussil at Mr. Kenny's, factory in a *kutcha kutcherry*, before two *amlah* of the factory, and Mr. Thomas Fraser and Mr. Benjamin Tripp, all of whom attest the confession, and the natives and Mr Fraser (who was alone questioned by the prisoner) deposed no threat was held out to the prisoner to make him confess.

"This confession being a very long one, I do not translate it; and as it will be read by the court, they will be better able to judge of its contents in the original, than if I was to give either a translation or abstract. I must, however, notice that the last question and answer in the confession were not attested by the two natives, or *amlah* of the factory, but only by Messrs. Frazer and Tripp, who both, on being questioned, deposed to the confession, including the last question and answer, being made before them.

"No separate question seems to have been put; but the prisoner's answer is, that of the rupees 100 given by Ramlochum Tar; Hosein gave him 10, which he spent, and the poison from the *kutwa* was put by him into the tea-pot. That after putting it in, and his hiding the *kutwa* behind the cook-house, Sonaoollah kidmutgar apprehended him.

"The law officer, on account of this contradiction between the statement of the kidmutgar and the statement made by the prisoner, in his confession before Messrs. Frazer and Tripp only, does not credit the evidence of the former, and who, in fact, is the only eye-witness. He objects to the witnesses, as all are Mr. Kenny's servants, including those to the confession; but the latter, at any rate, was made before the darogah. He also notices the absence of Mr. Kenny, and here I may observe that he had not left the country when the last sessions were held in December and January, and though duly served with a summons, he did not attend, though he visited his factory immediately after the sessions were concluded.

"The only witnesses who have deposed in this court to the poison having been put into the tea, *with intent to poison* Mr. Kenny, are the two kidmutgars, and both say it was his custom to take tea at night, and which they were in the habit of preparing for him in the cook-room.

"It will be seen that the law officer holds, that as he did not partake of the tea, or drink it, the offence was not complete.

"Now this is a most important question, and one for the court to decide upon. I never before tried a case of poisoning, and the only book of reference I have with me is Archbold's Pleading and Evidence, (10th edition), and at page 440 it is mentioned 'that the circumstances stated in *Rex vs. Cadman*, 1 Mood, 'C. C. 114, (ante p. 437,) would probably support this indictment,* and again 'it is immaterial whether bodily injury be or 'be not effected.'

"Now in this case the tea-pot containing the poisoned tea was never carried to Mr. Kenny's house, or the tea poured out for him to drink, and without this was done it would not be strictly administering under the English statutes for the offence.

"If the prisoner's confession is to be believed, he put the poison into the tea-pot from a box, the contents of which were arsenic, as proved by the sub-assistant surgeon's deposition, as well as the chemical examiner's report.

"It is difficult to imagine that the whole is a well-got-up play, but which has failed from the principal actor (the prisoner) overacting his part, or from some of the players being ignorant of the plot. The outbreak of temper on the part of Mr. Kenny, in the cook-house, was too natural for it to be supposed that the assault on the prisoner was made with a view to getting him to implicate Ramlochung Tar.

"And this brings me to the last question, and a nice point in the case. It will be seen, not only from Mr. Kenny's deposition *on oath* before the joint magistrate, but that of all the witnesses who went to the cook-room on the night of the occurrence, that the prisoner was *then* and *there* flogged by Mr. Kenny with a rattan. The joint magistrate, I gather from his *roobukaree* of commitment, considers the assault excusable under the circumstances.

"Now I am quite of a different opinion. I saw the prisoner's back a few days after he was sent to the *hajut*, and from the appearance *then*, there could be no doubt he had been severely flogged with a rattan or stick; and having suffered such punishment, can the party who inflicted it expect the court to award any more? It would, in my opinion, make the punishment cumulative, and that no court, I presume, can adjudge for one and the same offence.

* "Where the defendant gave the prosecutrix a cake containing poison, which she merely put into her mouth and spit out again, and did not swallow any part of it, it was holden that the mere delivery to the woman did not constitute an administering within the meaning of the statute, although the judges seemed to think that swallowing it was not essential."

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"With this opinion, I leave the prisoner's case in the hands of the court, and have suggested no per^{pet} settlement, though I hold the charge proved, as I consider it equally well proved that the prisoner was punished for attempting to poison his master, by his master *before* he was made over to the police to be dealt with according to law.

"With reference to the statement of the prisoner, made in his written defence, that he was the prosecutor in the case or trial, in which several persons were charged with attacking and plundering Mr. Kenney's house, I beg to state this is correct, and also that Ramdyal jemadar (a witness in this trial) was a principal witness in that case. I may also add that all the prisoners were acquitted by the *futwa*; and on the case being referred by me, the court (A. Dick, Esq., judge), also acquitted all the prisoners and directed their release. Not having the book containing the report, I cannot cite the date of my letter of reference, but it was made in the month of January 1849."

Resolution of the Presidency Court of Nizamut Adawlut, (Present: Mr. R. H. Mytton,) under date the 16th April 1852. —"The court having perused the papers above recorded, observe that the sessions judge in examining the witnesses to the confession before the darogah, which is a most important piece of evidence in this case, omitted to ask them whether it was given without compulsion. Careful examination on this point was the more necessary, as the prisoner bore marks of mal-treatment, and had, before the magistrate, asserted in his defence that he had been flogged by Mr. Kenney, in order to induce him to tell the story.

"Mr. Ellis, the sub-assistant surgeon, the only witness examined as to the contents of the box, and admixture in the tea-leaves, stated that they were arsenic, but he was not asked how he ascertained that point.

"The court direct that the case be sent back to the sessions judge with directions to re-open the trial, and to examine the four witnesses to the confession, *viz.*, Messrs. Tripp, Frazer, Samboonath Sandial and Hurnath Mitter, distinctly as to the confession being voluntary, in order to satisfy the court whether it was or was not the result of mal-treatment; also to examine Mr. Ellis on the point above indicated, *viz.*, regarding the means he adopted to ascertain that the powder was arsenic.

"The prisoner will be permitted to cross-examine the witnesses, and give any supplementary defence he may wish to record."

With reference to the above Resolution, the following Report, No. 10, of the 14th June 1852, was submitted by the Sessions Judge of Rajshahye:—

“ I have the honor to submit the further proceedings held in the case of the prisoner noted in the margin, on the 12th and 14th instant, agreeably to the orders of the court, (R. H. Mytton, Esq., officiating Judge,) conveyed in their resolution of the 16th of April last.

“ Only one of the native witnesses (Hurnath Mitter) attended on this occasion ; but he, as well as Messrs. Tripp and Frazer, have been fully examined to the Mofussil confession of the prisoner.

“ Mr. Ellis, the sub-assistant surgeon, has also deposed to the tests adopted by him for ascertaining what the powder consisted of, and which he before stated was arsenic.

“ As his assertion was confirmed by the report of the chemical examiner, Dr. O'Shaughnessy, I did not think it necessary on his first examination to question him further on the subject.

“ The law maxim in such cases is ‘ *cuilibet in sua arte perito est credendum.* ’ ”

Remarks by the Nizamut Adawlut.—(Present : Messrs. W. B. Jackson and R. H. Mytton.)—MR. R. H. MYTTON.—“ In conformity with the orders of the court of the 16th April last, the witnesses to the Mofussil confession have been distinctly examined to its having been given voluntarily, and they have deposed that it was so.

“ The sub-assistant surgeon in his first deposition merely stated that he had examined the supposed poisonous substances, and that they were arsenic. His deposition did not indicate whether the examination alluded to was merely ocular or by analysis. This defect rendered it necessary that he should be questioned as to the method of examination. The deposition now submitted, shows that his assertion was founded on analysis.

“ The charge was attempt to murder Mr. Thomas Kenny, by mixing poison with his tea, and this charge has been fully proved. It is not necessary to consider whether the prisoner could be convicted under the peculiar wording of an English statute of *administering* poison, as mooted by the sessions judge.

“ The chastisement by the intended victim of the prisoner on discovery of his attempt to take his life, does not in any way affect the liability of the offender to punishment by the officers of criminal justice.

“ In concurrence with the opinion of the sessions judge, I convict the prisoner of the charge laid, and propose that he be sentenced to imprisonment in transportation for life.

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"As the opinion of the sessions judge is in one respect favorable to the prisoner, the voice of another judge is necessary, under Clause 5, Section IV. Regulation IX. of 1831."

MR. WELBY JACKSON.—"I concur in convicting the prisoner, Zukkee chowkeedar, of attempting to poison his master, Thomas Kenny, by putting arsenic in his tea, and sentence him to transportation for life. The fact that Mr. T. Kenny on discovering the fact gave the prisoner several blows with a rattan, does not, in my opinion, preclude the court from sentencing the prisoner to punishment."

PRESENT :

W. B. JACKSON, Esq., Judge.

MUSST. CHUNDEEA

versus

JIHOTE ROY.

1852.

July 6.

Case of

JIHOTE ROY.

The Nizamut Adawlut, in concurrence with the sessions judge, who dissented from the verdict of acquittal by the jury, convicted the prisoner of rape.

CRIME CHARGED.—Rape on the person of Musst. Chundeea, prosecutrix.

Committing Officer, Mr. R. O. Heywood, officiating magistrate of Bhaugulpore.

Tried before Mr. R. N. Farquharson, sessions judge of Bhaugulpore.

Remarks by the sessions judge.—"Prosecutrix is wife of Kesoa (witness No. 4.) They are hill people, and live near Sukree, Pergunnah Teliagurree.

"On the afternoon of the day in question, she went from her home to the Sukree bazar, in company with Musst. Soondree, another hill woman (witness No. 1) to buy some salt. On their return about dusk, prisoner came upon them from behind, threw Chundeea on her back, got her arms under her, stopped her mouth with a cloth, and ravished her. Musst. Soondree, frightened by the threats of prisoner, did not interfere, but stood near, and swears to the crime having been perpetrated before her eyes. The road was a lonely one, the spot jungly, and the act was committed at the edge of the road or pathway, not within the jungle.

"Prisoner is a Rajpoot, and lives on produce of his cattle. He denies the crime, and says that there is enmity between him and the prosecutrix's party, owing to Musst. Soondree's husband having once killed and eaten one of his cows.

"The jury acquit, there being only one eye-witness, and no other corroborative testimony."

"I differ from the jury; and under Construction No. 634, transmit the case, according to Clause 3, Section VI. Regulation XVII. of 1817, to the Nizamut.

1852.

July 6.

Case of
JHOTEE ROY.

"I consider the evidence of the one eye-witness to the fact, in addition to prosecutrix's own statement as sufficient and conclusive:—*First*, because this evidence is clear and distinct, and the hill people generally speak the truth; *secondly*, because prosecutrix immediately went home crying and informed her husband of what had happened. The crime was perpetrated on the evening of the 30th April. Notice was at once given to the police, and prisoner was apprehended the next day. Prisoner was known to both prosecutrix and her husband by sight; but no sort of communication seems to have taken place between them previous to the attack and rape. Prosecutrix is young looking, for her age (sixteen), small, but well made, comely for her class, intelligent and very collected, and distinct in her testimony. Musst. Soondree's evidence was not so clearly given; her intelligence, I should rate very low: on the main facts, however, of the case, her testimony was straightforward and quite intelligible. She is a very forbidding-looking woman, of about twenty years of age or more. The husband, a smart young hill man of twenty or twenty-two, gives his wife an excellent general character. They have been married, it seems, a year, and have always lived together on good terms, have no family as yet, but said the girl, if it 'pleases God, I shall have a child some day.' Prisoner made an after-statement, that the girl was a loose character, and that this was her third husband; but both prosecutrix and her husband deny this, and state that she has had no husband but the present one. Prisoner's witnesses to defence, of whom only Nos. 5, 6 and 8, are in attendance, deny all knowledge of prisoner, or his acts or character; know nothing of the cow said to have been killed and eaten by Soondree's husband or any other cause of enmity between prosecutrix and prisoner."

Remarks by the Nizamut Adawlut.—(Present: Mr. W. B. Jackson).—"I convict the prisoner Jhotee Roy of rape, and sentence him to imprisonment for seven (7) years, with labor and irons."

PRESENT:

SIR R. BARLOW, BART., *Judge.*

UJUDHEA

versus

SUNICHUR (No. 9) AND BEHARI LAL (No. 10).

1852.

July 7.

Case of
SUNICHUR and
another.

The Nizamut Adawlut concurred with the sessions judge, in dissent from the zillah law officer, in acquitting the prisoners.

CRIME CHARGED.—Robbery of jewels valued at rupees 150 from the person of Musst. Janki, accompanied with violence.

Committing Officer, Mr. L. S. Jackson, magistrate of Patna.

Tried before Mr. G. Gough, commissioner, with powers of a sessions judge in Patna, on the 16th June 1852.

Remarks by the commissioner.—“The following are the particulars of this case:—It appears that the prosecutor and his wife, Musst. Janki, did not live together on any good terms, and that, in consequence of the disputes occurring between them, the latter determined upon leaving her husband and going to her own family: with this intention she quitted his house, and went in the first instance to a relative of the name of Musst. Birma, and afterwards to the house of one Kokil, a Kulwar, in whose house, it is alleged, she was robbed of her ornaments by the prisoners.

“The only evidence in regard to the robbery is that of Musst. Janki and two witnesses, named Jeetoo and Kadir Ale. The woman states that the two prisoners came to Kokil's house, and after using threats required her to give up her ornaments, and on refusing to do so, that Behari Lal drew a sword and declared he would kill her if she persisted in her denial. The ornaments were at last forcibly taken from her body by Behari Lal, the prisoner Sunichur being present, and, as Musst. Janki asserts, urging Behari Lal to kill her if she would not give up the property. All this Musst. Janki distinctly affirms occurred in the *kotha* (a room on the roof) of Kokil's house, which she says was shut up.

“The evidence of the two witnesses does not corroborate this statement of Musst. Janki, but, on the contrary, is wholly opposed to it in some most important particulars. Jeetoo and Kadir Ale both say that they heard the woman crying in Kokil's house, and on going there they saw the prisoners robbing her of her ornaments *under a tree in the khund*, or enclosed space about the house, while, as above-mentioned, the woman herself affirmed that the robbery was effected while she was in the *kotha*, or room on the roof.

“The law officer, admitting the evidence of Jeetoo and Kadir Ale as good, and rejecting that of Musst. Janki, convicts the two prisoners.

"I cannot concur in this finding; and am of opinion that a discrepancy as to where the robbery took place, such as is apparent in the evidence of the three witnesses, is fatal to the prosecution. The woman, who says she was robbed, affirming that the occurrence took place in the *kotba*, or room on the roof, while the witnesses to that very occurrence declare in their evidence, that she was robbed in altogether a different locality! and under this view of the case I would acquit the prisoners.

"I beg leave therefore to refer the case for such orders as the court may consider proper."

Remarks by the Nizamut Adawlut.—(Present: Sir R. Barlow, Bart.)—"I concur with the commissioner in the acquittal of the prisoners. The evidence of the two eye-witnesses is opposed to the statement of Musst. Janki. The witnesses were on their way home between 8 and 9 p. m., and still they saw the prisoner in the act of stripping off Janki's ornaments in an open place near Kokil's house. They however did nothing to ensure their apprehension, nor does it appear that they took the trouble to speak to Kokil on the subject. Janki has sworn she was robbed in Kokil's house. The whole story is improbable. The charge is not by any means satisfactorily established."

PRESENT:

SIR R. BARLOW, BART., *Judge*.

LOERAM SIRCAR, SERVANT OF ESSANCHUNDER
BANOORJEA

versus

KALEE CHURN CHOWKEEDAR.

CRIME CHARGED.—Accessory before the fact in a dacoity committed in the house of the prosecutor's master, Essanchunder Banoorjea, on the night of the 3rd September 1851, corresponding with the 19th Bhadoon 1258 B. S.; in which dacoity, property to the value of rupees 683-9-5 was plundered by the dacoits.

CRIME ESTABLISHED.—Accessory before the fact in a dacoity committed in the house of the prosecutor's master, Essanchunder Banoorjea; in which dacoity, property to the value of rupees 683-9-5 was plundered by the dacoits.

Committing Officer, Mr. C. H. Campbell, officiating joint magistrate of West Burdwan.

Tried before Mr. P. Taylor, sessions judge of West Burdwan, on the 8th April 1852.

Remarks by the sessions judge.—"The house of the prosecutor's master was attacked by dacoits, on the night of the 19th

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Case of
SUNICHUR and
another.

1852.

July 7.

Case of
KALEE
CHURN CHOW-
KEEDAR.

The prisoner, although he was chowkeedar of the village, was accessory before the fact to a dacoity in it.

Conviction and sentence by the sessions judge, affirmed in appeal.

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July 7.

Case of
KALKE
CHURN CHOW-
KEEDAR.

Bhadoo, after the prisoner, who is chowkeedar of the village, had been seen at the door of it by the prosecutor and witness No. 12, Hurree Potdar (summoned by me), and had said before them that no robbery should take place that night as long as he had life. Just before the dacoits entered the house, he was heard conversing with them in a low tone by the prosecutor. After the departure of the dacoits, none of whom were recognized by any person, the prisoner was sought and shouted for, but not found, though he appeared near the house of his own accord a short time afterwards, and was seen by witness No. 12, Hurree Potdar (summoned by me) and others, whom he told that the dacoits had bound him and taken away his weapons before they entered the house. He did not give immediate notice to the thanna when told to do so; and subsequently confessed in the Mofussil and before the joint magistrate, that he had been invited to commit the dacoity by various persons, whom he named, and that he did not immediately inform the thannadar through fear of the said persons. There is strong reason to believe that he did not name the actual perpetrators of the crime in these confessions; thus shielding the guilty, and endeavouring to involve *innocent persons*. Both confessions were sufficiently proven by the witnesses Nos. 4, 6 and 7, and Nuddear Chand (summoned by me), and the witnesses to the *sooruthal* established the actual occurrence of the dacoity.

"The prisoner made no defence, as he acknowledged the correctness of both his confessions.

"On consideration of all these circumstances, I convicted him of the crime charged, and punished him as noted, but did not think it necessary to sentence him to banishment."

Sentence passed by the lower court.—Twelve (12) years' imprisonment, with labor in irons, (two of these being in lieu of corporal punishment), and two (2) years more, also with labor in irons, in consequence of his being a chowkeedar,—total, fourteen (14) years' imprisonment, with labor in irons.

Remarks by the Nizamut Adawlut.—(Present: Sir R. Barlow, Bart.)—"The prisoner did not confess in the sessions court to anything connected with the offence with which he is charged, though he admitted his foudaree confession. In that and in his Mofussil confession, he acknowledged he had had a conference with one Gungahurree Pal, regarding a dacoity to be committed in the prosecutor's house, about two days before it took place.

"He did not appear on the spot till the dacoits had gone off, when he said they had bound him. One witness, Sook Deb, has sworn that he heard the prisoner in conversation with the dacoits who attacked the house, and called to him, but received no

answer. There was some apprehension, from whatever cause, that a dacoity would take place, but the prisoner said none should occur. It appears from his confession before the magistrate, that the prisoner had upon another occasion communicated with one Kalee Biswas on the subject of a dacoity to be committed in the house of Modhoo Kooloo. The prisoner is chowkeedar of the village, and should have given information to the darogah of what he had heard; he should also have mentioned it to the proprietor of the house.

"I convict him of being accessory before the fact, and, in consideration of his being the chowkeedar, sentence him to fourteen (14) years' imprisonment, with irons and labor."

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Case of
ZUKKE
SHEIKH
CHOWKEE-
DAR.

PRESENT :

J. R. COLVIN, Esq., *Judge.*

A. J. M. MILLS, Esq., *Officiating Judge.*

GOVERNMENT

versus .

ALLOOAK ALIAS LUCKNAI (No. 1), MUTACK (No. 2)
AND HUNBAUG ALIAS PAMUN (No. 3).

CRIME CHARGED.—Highway-robbery and murder of Bielloo Ahom, Beju Ahom, Musst. Khadai and Musst. Bhogdai (infant).

Committing Officer, Captain C. Holroyd, magistrate of Seeb-saugur, Assam.

Tried before Mr. H. Vetch, deputy commissioner of Assam.

Remarks by the deputy commissioner.—"From the proceedings, it appears the prisoner No. 1, Alloak *alias* Lucknai, No. 2, Mutack, No. 3, Hunbaug *alias* Pamun and Sapoo *alias* Sunnee, (who escaped after commitment,) are charged with highway-robbery and the murder of four persons, namely, the deceased Bulloo, Beju, Musst. Khadai, and Musst. Bhogdai (a child), under the following circumstances:—The deceased, who were all near relations, left Kanoo Gaun on their way to Gohun Gaun, a place near Naga hát in Boorwahchullee, taking with them some property, a cow and bullock, and nothing further was heard of them until information was given by the widow of the late Joggesor Raja, that she had seen some dead bodies on the Dhadharallu (i. e. the road which leads from

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July 9.

Case of
ALLOOAK
alias LUCKNAI
and others.

Three Nagas, convicted of the murder of four prisoners in the Seeb-saugur district, probably with a view to robbery, sentenced to death, in concurrence with the opinion of the deputy commissioner of Assam, although the

magistrate had recommended only a sentence of transportation for life. The deputy commissioner considered the infliction of capital punishment to be called for, with a view to example, for the repression of acts of savage violence of the Nagas, who now resort to the plain for traffic in considerable numbers.

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Case of
ALLOOAK
alias LUCK-
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others.

Jeypore to Seehsaugur), at a place called Sappeekuttee. These dead bodies were afterwards examined, and recognized as those of Bulloo, Musst. Khadai, and Musst. Bhogdai, all having their skulls cut through, but the body of Beju was not found, and the property they had taken with them was also missing. The cattle found their way to Naga *hât*. This was the fifth day after the deceased left Kanoo Gaun, and the latter end of April 1851, and it was not until October that Rungsoa made his first disclosure to the police at Jeypore, from which and his subsequent statements, it appears that the three prisoners and Sapoo, Nagas of Banphirah, had come down to Jeypore, from whence he, Rungsoa, accompanied them back to their hills; and on their way (which lay along the Dhudarallu at Sappeekuttee jungle), while they stopped to cook, the deceased approached, travelling in the direction of Jeypore; when near, the four Nagas went up to them, and No. 1, prisoner Allooak, commenced examining the contents of the load Bulloo was carrying; meanwhile prisoner No. 2 proposed to purchase Bulloo's spear, which he refused to part with for less than four annas, when Sapoo taking it from him, the prisoner No. 1 killed Bulloo by a blow on the head with his *dâo*, or sword; No. 2, Mutack, cut the woman over the back of the neck and killed her; while Beju, who had the child on his back attempting to escape, was overtaken by No. 3, and Sapoo, who killed both; after this, the prisoners, having collected the property of the deceased, fled to the hills, accompanied by the deponent. On the 24th November the prisoner No. 1 was given up by the Jooboka Raja, a hill chief, to a party of sepoy sent into the hills for the purpose of apprehending murderers; but the prisoners Nos. 2 and 3 and Sapoo, then escaped, and they were not apprehended until the 7th March 1852, when they were also given up to a party of Sepoys sent into the Naga Hills to demand them.

"The prisoners Nos. 1, 2 and 3, pleaded 'guilty.'

A Rungsoa.—"No. 1 witness Rungsoa deposed to seeing the murders committed by the prisoners, and to their carrying off the property. The substance of his deposition has been already given, in detailing the features of the case; there appears to be some discrepancy between the evidence given by this witness in his deposition before the joint magistrate in the preliminary investigation and that before the jury; in that in the former he says he was not able to say who were the persons killed by particular Nagas, and in the latter he states these particulars.

B Apoooso,

C Junnuck Sykea,

D Musst. Amoku,

—"Depose to the *sooruthal*, and recognize the corpses of the deceased, Bulloo, Musst. Khadai, and Musst. Bhogdai, also that the four persons murdered had been seen by them alive five days before at Kanoo Gaun.

E Makooru, } —“ To the apprehension of the
F Poosoi Chowtany, } prisoner No. 1.
G Jattie Jemadar, }
H Gurrilla Kutki, } —“ To the apprehension of the
I Hooarung Chowtany, } prisoners Nos. 2 and 3.
J Monsooa Chowtany, }
E Makooru,—“ To the confession of No. 1, when apprehended.

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G Jattie Jemadar, } —“ To the confession of Nos. 2
I Hooarung Chowtany, } and 3, when apprehended.
J Monsooa Chowtany, }
K Byragu *mookhtar*,—“ To the confession made before the
 magistrate of prisoner No. 1.
L Megganund Gogu,—“ To the confession made before the
 magistrate of prisoner No. 2.
M Jadoe Hazaree,—“ To the confession made before the
 magistrate of prisoner No. 3.
N Roogoo Surmah *vakeel*,—“ To the confession made before
 the magistrate of prisoner No. 3.
B Apoosoo,—“ Recognizes an *areah gumcha* (a cotton cloth
 worn by females), two *kassbattees*, and a *kotaru*, as the prop-
 erty of Beju.

D Musst. Amoku,—Recognizes a *kotaru* and a *gumcha* as
 belonging to Beju.

I Hooarung Chowtany, } —“ Depose to four of the articles
J Monsooa Chowtany, } of property having been obtained
 from Joku Koonsi, to whom the prisoners Nos. 2 and 3 acknow-
 ledged they had sold them.

O Aheer Naga,—“ Deposes to having reported to his raja,
 that a murder had been committed in the plains, and on being
 questioned as to what Nagas were down, he mentioned the
 prisoners, who on being called denied, and the following day fled
 to evade the ordeal of being sworn.

P Augur,—“ Deposes to the prisoners having put up with
 him at Jeypore, and having sent Rungsoa with them to the
 hills to get some cloth, and that three days after their departure
 he heard of the murders. That Rungsoa on his return, two
 months after, did not tell what had happened, but a month and a
 half later he disclosed the circumstances to him, when he gave
 notice to his raja.

Defence.—“ The prisoners had nothing to urge in their
 defence, with the exception of No. 1, who says Bulloo struck
 him first.

“ The jury empannelled by the magistrate were unanimous in
 their verdict of guilty.

“ The magistrate concurs in the verdict given by the jury, and
 at the same time, for the reasons stated in his *roobukaree* and

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letter, recommends that the prisoners be transported for life, instead of being punished capitally.

"There are some discrepancies between the depositions made at different times by the only eye-witnesses to the murders, but these are no more than might be expected from any native placed in his position, and afraid of criminating himself by stating all he knew at first. The confessions are clear and complete; and the circumstantial evidence so fully corroborative as not to leave the least doubt on my mind, as to the guilt of all the prisoners.

"The further reasons assigned by the magistrate for the mitigated punishment would have been entitled to much weight when our intercourse with these savage tribes was less frequent, but of late years the Nagas have not only been constant frequenters of the Jeypore *bugans* and *hâts* and villages in the plains in the vicinity of the hills, but cross over in numbers to Dibrooghur and other distant points to barter. Therefore it appears to me that it has become necessary for example to resort to capital punishment in a case so atrocious and cold-blooded as the present; and concurring as I do in the justness of the verdict of the jury and opinion of the magistrate, in finding the prisoners, No. 1, Alloak *alias* Lucknai, No. 2, Mutack, and No. 3, Hunbaug *aliys* Pamun, guilty of highway-robbery and murder, I recommend that they should suffer capitally.

"As no plan of the place where the murder was committed accompanied the magistrate's proceedings, and as such would have been of little use, unless it also showed the position of the neighbouring hills where the prisoners resided, to supply this deficiency I have attached a map of the Seebsaugur district, which I request may be returned when no longer required."

Remarks by the Nizamut Adawlut.—(Present: Messrs J. R. Colvin and A. J. M. Mills).—MR. A. J. M. MILLS.—"I concur with the deputy commissioner and the magistrate, who held the trial with the assistance of a native jury, in the conviction of the prisoners of murder and robbery. The prisoners, indeed, pleaded guilty, and have urged nothing in their defence which can in any way extenuate their offence. The prisoner No. 1, Alloak, states that he asked the deceased persons for some *pân* and tobacco, and that one of them gave him a slap on the head, when he became like *a man out of his senses*, and struck him with the back of his *dâo*, or hatchet, a blow on the head, which fractured his skull. He says, he *observed that they had some property with them*. Mutack, No. 2, states that prisoner No. 1 first killed a man, and then he killed the woman and took her property. No. 3 Hunbaug, states that prisoners Nos. 1 and 2 first killed a man and a woman, and that he and Sapoo, who effected his escape from jail,

then killed the other man, who had an infant fastened behind his back, and that the infant fell to the ground and died from the effects of the fall. It does not, however, appear that they were humane enough to spare the infant, as the inquest held on the three bodies which were found, shows that the skull of the child was cut through. The magistrate is of opinion that the deed was 'the impulse of the moment, probably caused by the prisoner No. 1 striking the deceased, Bulloo, on the head in return for a blow, he says, the deceased gave him,' and that 'they cut him and the rest up to escape detection.' The Nagas are, he remarks, a wild, savage race, acting on the impulse of the moment, and thinking very lightly of a man's life, but they are, I would remark, at the same time, addicted to rob and plunder. The prisoner No. 1 says, as above stated, that he observed the travellers had some property, and the prisoner No. 3, in his foudjaree confession states that the prisoners Nos. 1 and 2 entered into a dispute with them on the *pretext* of purchasing a spear. These expressions, coupled with the fact that they did carry off the property of the travellers, raise a strong presumption that robbery was the motive which instigated them to murder these helpless persons. But,—be the motive revenge or robbery, or both combined,—they are guilty of an inhuman and atrocious murder, and as the deputy commissioner has, in opposition to the opinion of the magistrate, recommended that they should, for the sake of example, be sentenced capitally, on grounds which appear to me to be sound and judicious, I propose that they be sentenced accordingly."

MR. J. R. COLVIN.—"The case is one, at the least, of the reckless and cruel murder of four persons; and the strong probability certainly is that these murders were deliberately committed with a view to robbery. The opinion of the deputy commissioner, an officer of character and much local experience, is that capital sentence on these prisoners is necessary, for the repression of acts of savage violence by the Nagas, who now resort to the plains in considerable numbers. I concur, therefore, in the sentence on all the prisoners, proposed by Mr. Mills."

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PRESENT :

R. H. MYTTON, Esq., *Officiating Judge.*

MUSST. SHANOO BEWAH AND BUSHARUT KHAN

versus

MUSSOOM KHAN.

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Case of
MUSSOOM
KHAN.

Charge, culpable homicide. Sentence five years' imprisonment.

Prisoner in a trivial squabble, hit the deceased with a *dão* on the head and clove his skull. He should have been committed for wilful murder.

CRIME CHARGED.—Culpable homicide of Assalut Khan.

CRIME ESTABLISHED.—Culpable homicide.

Committing Officer, Mr. A. Abercrombie, officiating magistrate of Mymensing.

Tried before Mr. R. E. Cunliffe, sessions judge of Mymensing, on the 25th May 1852.

Remarks by the sessions judge.—“From the evidence of the prosecutrix, and the eye and the other witnesses, it is proved that the cows of the prisoner had gone into the deceased's crop, on which a quarrel ensued, and the prisoner struck the deceased a blow with a *dão* on the head, above the left ear, which caused a wound, five inches in length, which penetrated the skull and injured the brain, and was the cause of death, as shown by the evidence of the civil surgeon. Before the officiating magistrate, the prisoner said that as he and the deceased and witness No. 1 were quarrelling, deceased's wife came with a *dão* and struck at him, but the blow fell upon the deceased, and that the charge had been made for the purpose of getting possession of his *baree*. Before this court he denied having struck the deceased, and alleged enmity with witness No. 1, and from the evidence of his witnesses, it does appear that they have disputes about land, but this does not affect the evidence of the other eye-witness, or of those who came up immediately afterwards and heard the wound had been inflicted by the prisoner. The *futwa* of the law officer convicts him of culpable homicide, in which I concurred.”

Sentence passed by the lower court.—Five (5) years' imprisonment, with labor in irons.

Remarks by the Nizamut Adawlut.—(Present: Mr. R. H. Mytton.)—“The prisoner in his appeal presses on the notice of this court, the account which he gave to the magistrate of the affair, which is, that the fatal blow was struck at him by the wife of deceased, and, missing its aim, hit the deceased. This is a very improbable story, and is not supported by any proof.

“The appeal is rejected.

“The prisoner should have been committed for wilful murder.”

PRESENT :

A. J. M. MILLS, Esq., *Officiating Judge.*

SULLUFF DOSS, BEARER, SERVANT OF DR. A. C.
MACRAE

versus

KOODRUTOOLLAH.

CRIME CHARGED.—Theft of property, valued at Company's Rupees 431-8-0, belonging to the master of the prosecutor.

CRIME ESTABLISHED.—The same as charged.

Committing Officer, Mr. E. Jenkins, magistrate of Howrah, 24-Pergunnahs.

Tried before Mr. E. Bentall, additional sessions judge of 24-Pergunnahs, on the 14th April 1852.

Remarks by the additional sessions judge.—“ On the night of the 15th March last, the bearer of Dr. Macrae, of Howrah, was disturbed by hearing a noise in the house of his master ; he called some other servants, and two men ran out of the house, but went in different directions. This prisoner fell as he was getting over a rail in the compound, and was secured by the servants. A light was obtained, and different articles of property were found scattered in different places ; a microscope, two silver-mounted *chowrees*, &c., had been carried out of the house by the thieves, but were not carried off the premises. The prisoner is recognized as a man who had lately been released from jail. I find, on reference to the record, that he was released on the 26th of February last, after having undergone three (3) years' imprisonment, for committing a burglary in Sulkeea.”

Sentence passed by the lower court.—Seven (7) years' imprisonment with labor and irons, and in lieu of corporal punishment, two (2) additional years,—total, nine (9) years' imprisonment.

Remarks by the Nizamut Adawlut.—(Present : Mr. A. J. M. Mills.)—“ The prisoner has appealed. He urges that Dr. Macrae's sirdar bearer bears him ill-will, because he had an intrigue with the bearer's mistress, and that the bearer seized him as he was going along the road, and falsely charged him with theft in his master's house. No allusion to this worthless defence was made by the prisoner in his answer before the magistrate, and the sirdar bearer deposed that he had never seen him before. The prisoner's guilt is conclusively established, and I confirm the sentence, which, as the prisoner is an old offender, is appropriate for the crime.”

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Case of
KOODRUTOOLLAH.

The sentence passed upon the prisoner, an old offender, affirmed in appeal.

PRESENT :

W. B. JACKSON, Esq., *Judge*.

BEHARI ROY

versus ,

BIDDEE ROY.

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Case of
BIDDEE ROY.Conviction
and sentence
passed by the
sessions judge,
affirmed.

CRIME CHARGED.—1st count, riot attended with wounding of Behari Roy ; 2nd count, incendiarism ; 3rd count, accessory before the fact ; 4th count, aiding and abetting in the above.

CRIME ESTABLISHED.—Riot attended with wounding of Behari Roy.

Committing Officer, Mr. R. J. Richardson, officiating magistrate of Sarun.

Tried before Mr. C. Garstin, sessions judge of Sarun, on the 10th March 1852.

Remarks by the sessions judge.—“ The riot charged against this prisoner took place under the following circumstances:—A person named Foujdar Roy, having obtained a decree against the prisoner, and some twenty-one other parties, sued out execution on it, and in so doing, attached a field of cane (amongst other property) belonging to him, upon which he with other persons set upon and beat the prosecutor, who, being a servant of Foujdar's, had gone with the peadas, &c., to attach the property, and beat him with a *lattee*, whilst Sarun Roy (fled) cut one of the peadas with a sword ; after this the prisoner set fire to his own cane field and destroyed part of it, and some of the other rioters set fire to their own houses and burnt down the village. In his defence the prisoner denies having beaten the prosecutor or having fired his field, and he declares that the case has been got up from enmity, but calls no witnesses to prove this. The moulvee convicts him of the first count only ; and as there is no doubt of his guilt upon this count, and a conviction upon it appears to me sufficient for the purposes of justice, I have, in concurrence with the *futwa*, sentenced the prisoner as noted in the preceding column.”

Sentence passed by the lower court.—Three (3) years' imprisonment without irons and a fine of twenty (20) rupees or labor.

Remarks by the Nizamut Adawlut.—(Present : Mr. W. B. Jackson.)—“ I see no reason to interfere with the sentence passed on the prisoner Biddee Roy.”

PRESENT :

W. B. JACKSON, Esq., *Judge.*

LALOO KULWAR.

. *versus*

BHUNJUN CHURUNDAR, (No. 6) AND KADER
BUKSH, (No. 7)

● **CRIME CHARGED.**—1st count, embezzlement of 160 maunds of linseed, valued at rupees 223-12-0, contained in a boat belonging to their master, they being at the time *churandar* and *manjee* of the same boat; 2nd count, theft of above property; and 3rd count, fraudulently selling to Heeramun Sahoo, the above linseed for rupees 160.

CRIME ESTABLISHED.—1st count, embezzlement of 160 maunds of linseed, valued at rupees 223-12-0, contained in a boat belonging to their master, they being at the time *churandar* and *manjee* of the same boat; and 2nd count, fraudulently selling to Heeramun Sahoo the above linseed for rupees 160.

Committing Officer, Mr. G. G. Balfour, magistrate of Monghyr.

Tried before Mr. R. N. Farquharson, sessions judge of Bhagulpore, on the 16th April 1852.

Remarks by the sessions judge.—“Prisoner No. 6 pleaded ‘not guilty’.

“Prisoner No. 7 pleaded ‘guilty,’ of making away with his employer’s grain.

“Prisoners Nos. 8 and 9 pleaded ‘not guilty’.

“Prosecutor shipped 160 maunds of linseed at Golah Gopalpore, zillah Goruckpore, for Calcutta, on the boat of Kader Buksh Manjee (prisoner No. 7), placing Bhunjūn (prisoner No. 6) as *churandar*. On arriving at Monghyr, the grain was sold to one Heeramun or Heera Sahoo (witness No. 4); but he, suspecting some foul play, put off payment for a day or two, and in the mean time the attempted fraud was discovered and the parties arrested. Bhunjūn, meanwhile, had written a letter to his employer, stating the misappropriation of the grain, but throwing all the blame on the *manjee*, Kader Buksh. This letter I have every reason to believe, was written rather to screen himself than to protect his employers.

“It is fully proved in evidence that both Bhunjūn and Kader Buksh were equally concerned in, and cognizant of, the fraud and attempted sale of their employer’s property. Prisoner No. 8* was a mere boatman, and not proved to have taken any share in

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Case of
BHUNJUN and
another.

The conviction of the prisoners who embezzled and made away with their master’s property, upheld on appeal.

* Acquitted by the lower court.

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others.

the transaction beyond what formed part of his daily work at the bidding of his *manjee*. Prisoner No. 9*, charged as accessory before and after the fact, is not proved to have knowingly entered into the fraud, and though certainly assisting at the sale under suspicious circumstances, cannot be convicted of any direct participation in the criminal act.

“Witness No. 1 is himself a *dullal*, or agent, and seeing the sale of linseed going on at the ghat, inquired into the particulars; his suspicions were aroused by the cheap rate prisoners were selling at, and he gave notice of the fact at the *thaunnā*, which caused the arrest of the prisoners.

“Witnesses Nos. 2 and 3 assisted at the weighing of the grain and transfer to Heeramun (witness No. 4), who was the purchaser of the grain, and the property was seized in a boat of his at the ghat. He made the purchase on the faith of prisoner No. 9, also a *dullal*. The property is fully identified by witnesses Nos. 7 and 8, who were with the prosecutor when the grain was shipped at Golah Gopalpore.

“The jury find prisoners Nos. 6 and 7 guilty of all three counts of the indictment, and acquit prisoners Nos. 8 and 9 for want of proof of complicity. I concur with them in their acquittal of prisoners Nos. 8 and 9, but set aside the second count of theft, and sentence prisoners Nos. 6 and 7 for embezzlement and fraudulent attempt to make away with their employer's property, to three (3) years' imprisonment and a fine of rupees one hundred (100) each, in default of which after one (1) month, labor without irons.

“The grain has been ordered to be restored to the prosecutor.”

Remarks by the Nizamut Adawlut.—(Present: Mr. W. B. Jackson.)—“The fact of the prisoners attempting to sell their master's property is not disputed, but they say they sold it because the boat leaked; and their object was to save the property. This is not established, and I therefore see no reason to disturb the conviction or sentence.”

* Acquitted by the lower court.

PRESENT :

R. H. MYTTON, Esq., *Officiating Judge.*

UMBICA CHURN ROY

versus

SOORJOMONEE BEWAH (No. 1), BHYRUB DHOBA
(No. 2) AND KUMOUL HURREE (No. 3).

CRIME CHARGED.—1st count, having enticed and taken away Sookhoda, a married female, living under the protection of her husband, the prosecutor, for the purpose of rendering her a prostitute or concubine, or otherwise disposing of her in an unlawful manner, without the consent of her husband; 2nd count, having aided and abetted in enticing and taking away Sookhoda, a married female, living under the protection of her husband, the prosecutor, for the purpose of rendering her a prostitute or concubine, or otherwise disposing of her in an unlawful manner, without the consent of her husband.

CRIME ESTABLISHED.—No. 1, having enticed and taken away Sookhoda, a married female, living under the protection of her husband, the prosecutor, for the purpose of rendering her a prostitute or concubine, or otherwise disposing of her in an unlawful manner, without the consent of her husband, and Nos. 2 and 3, having aided and abetted in enticing and taking away Sookhoda, a married female, living under the protection of her husband, the prosecutor, for the purpose of rendering her a prostitute or concubine, or otherwise disposing of her in an unlawful manner, without the consent of her husband. •

Committing Officer, Mr. E. Jenkins, magistrate of Howrah, 24-Pergunnahs.

Tried before Mr. E. Bental, additional sessions judge of 24-Pergunnahs, on the 20th March 1852.

Remarks by the additional sessions judge.—“The prosecutor lives with his father at Shibpore. About three years ago, he married the girl Sookhoda, who has been living in his house for the last two years, but is now only about nine or ten years old. The prosecutor and his father state that on the 17th of January the girl was missed, and could not be found, but information was the next day brought that she was in Calcutta, where the prosecutor went and found her and brought her back. When she was missed no information of the circumstance was given to the police at Howrah, and when she was found in Calcutta the same secrecy was kept from the police. The prosecutor and his father say that the girl had on no ornaments,

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Case of
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others.

Sentence of
seven years' imprisonment
for enticing
away a female,
nine years old
with intent to
make a prostitute of her,
confirmed.

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when she was taken off; but that she had many which were previously lost, and which there is now reason to suspect had been obtained from her by Soorjomonee, (prisoner No. 1). When news of her being found reached the prosecutor, he went to Calcutta, unaccompanied by any friend, and found his wife. The story of the witnesses who recovered her in Calcutta is, that they got possession of the child and found out from her who she was, and sent word by an old woman, who sent another person to her husband, who came to the place in a boat, and after two hours' delay was taking her into a boat, when the prisoner No. 2 was seen near the spot by the witnesses who had observed him the day before with the girl, and the prosecutor, consequently, took him also into the boat, and returned to the Howrah side of the river with the party. The prisoner No. 1 made a deposition before the police, which greatly implicated her in the charge, and the others made statements that they went across the river with Soorjomonee and the girl; but their statements cannot be proved. Before the magistrate Soorjomonee (No. 1) said, that she was induced by the girl to take her off from her husband's house, and that the other prisoners went with her, and Bhyrub (No. 2) said, that he crossed the river with the party and returned with them. Although the circumstance was kept a secret from the police, there can be no doubt about the girl's having been carried off from her husband's house, without the husband's consent, to be disposed of in an unlawful manner, and as Bhyrub was apprehended lurking about the spot where she was found, and all the prisoners live near the prosecutor's house and were all seen together with the girl by three witnesses, *viz.*, Nos. 1, 12 and 13, and the statement of prisoners Nos. 1 and 2 before the magistrate show that they and the girl crossed the river together, and that they re-crossed by themselves after the girl had been left with a woman in Calcutta, I convict No. 1 of the first count, and Nos. 2 and 3 on the second count."

Sentence passed by the lower court.—Each seven (7) years' imprisonment, Nos. 2 and 3 with labor, and No. 1, with labor suited to her sex.

Remarks by the Nizamut Adawlut.—(Present: Mr. R. H. Mytton).—"All the prisoners appeal, pleading that they know nothing of the charge. Their guilt, however, is fully proved. This is not the first case of the kind which has come before me from the 24-Pergunnahs and Howrah, and from the record of the grounds of commitment recorded by the magistrate of the former district, it appears that the offence of enticing female children away from their homes, in order to sell them in the Calcutta brothels, is very common. It is an offence inflicting great pain on the relatives of the children. In this instance the guilt

of one of the prisoners, Soorjomonee, is aggravated by her previously prevailing upon the child to give up her ornaments on the false pretence of providing for the expense of taking her to her father's house. I see no reason therefore to interfere with the sentence of seven (7) years' imprisonment passed by the sessions judge."

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SOORJOMONEE
BEWAH and
others.

PRESENT :

A. J. M. MILLS, Esq., *Officiating Judge.*

GOVERNMENT

versus

FUKHIRNEE CHOKRY.

CRIME CHARGED.—Wilful murder of Boodee Chokry.

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Committing Officer, Mr. E. S. Pearson, magistrate of Dinagepore.

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Case of
FUKHIRNEE
CHOKRY.

Tried before Mr. J. Grant, sessions judge of Dinagepore, on the 14th June 1852.

Remarks by the sessions judge.—“The prisoner Fukhirnee Chokry, some nine years of age, wife of Fella Nusho, was charged with the wilful murder of Boodee Chokry, the niece of Fella Nusho, and about six years of age. The prisoner had been married only a short time, and lived with her husband in her brother-in-law's house, from which she frequently made her escape and went home to her mother's. From the prisoner's Mofussil and foudaree confessions, it appears that on the 30th April last, she was on the way to her maternal uncle's, avoiding her mother's from the dread of being as usual taken back to her husband's; that the deceased persevered in accompanying, though frequently desired not to do so; that the prisoner, therefore, when they came to some jungle, killed her by repeated blows of a heavy stick, scratched the face afterwards with a knife, and threw the body in the jungle, taking with her the cloth worn by the deceased; that on being questioned by her uncle as to the marks of blood on her clothes, she said her husband had beaten her and made her mouth bleed; that subsequently when being taken home by her brother-in-law, who had come in search of her and his daughter, she confessed, told where the body was (which was then not found it being dark), and pointed it out next morning. The *futwa* of the law officer convicts the prisoner of culpable homicide; but I do not concur, as it appears to me a clear case of deliberate murder. The motive apparently was to prevent her own escape being discovered, through her arrival at her uncle's in company with the deceased; and in other respects the case is somewhat similar to that of Musst.

The prisoner, although convicted of murder, was only sentenced to imprisonment for life in consideration of her extreme youth, *viz.*, nine years three months old.

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CHOKRY.

Odhaneah, (Nizamut Reports, volume I, page 213,) with reference to which, I recommend that the prisoner be sentenced to imprisonment for life in the zillah jail with reference to her sex."

Remarks by the Nizamut Adawlut.—(Present: Mr. A. J. M. Mills.)—"The law officer declared that the prisoner had arrived at the edge of puberty, and was guilty, but considering the evidence insufficient to justify a sentence of *kissas*, pronounced her only liable to *tazeer*, or discretionary punishment.

"The prisoner in her defence states, that she was induced by the husband of one Pootee, a neighbour, to confess before the police and the magistrate, under the hope of thereby escaping from the charge, and that Pootee herself called her and the deceased to her house, and was about to kill her, when she ran away, leaving the deceased there. She therefore *suspects* that Pootee killed the deceased. There is nothing on the record to show that this unsupported assertion has the slightest foundation in fact or probability. The confessions of the prisoner are duly attested, and are corroborated by her pointing out the place of the murder, and the finding of the body thereat. It is stated, also, that she gave up the cloth worn by the deceased. I regret to observe that the sessions judge has neglected to question the witnesses in whose presence she produced it on this material point; as also to examine her maternal uncle as to the marks of blood on her clothes, and as to how she accounted for them, when interrogated by him. It is unnecessary to remand the case for the purpose of supplying the omission, as the proof is ample without it, but I notice it for the sessions judge's future guidance.

"There is no doubt on the evidence as to the guilt of the prisoner, and as to her capability of distinguishing between right and wrong. The offence of the prisoner is manifestly murder, but in consideration of the extreme youth of the prisoner, *viz.*, nine years and three months, I sentence her to imprisonment for life."

PRESENT:

J. R. COLVIN, Esq., *Officiating Judge.*

MAHOMED AMA

versus

ZOHIROODDEEN (No. 10), LALL MAHOMED (No. 11)
AND NEAMUT ALEE (No. 15, APPELLANT).

CRIME CHARGED.—1st count, Nos. 10, 11 and 15, burglary in the house of the prosecutor, Mahomed Ama, and theft of property valued at rupees 299-4-0; and 2nd count, prisoners Nos. 11 and 15, being in possession of property, knowing it to have been obtained in the above burglary.

CRIME ESTABLISHED.—No. 10, burglary in one case, and in a second case, being in possession of stolen property knowing the same to have been obtained by theft, and Nos. 11 and 15, burglary in the house of the prosecutor, and theft of property valued at rupees 299-4-0, and being in possession of property knowing it to have been obtained by burglary.

Committing Officer, Mr. F. B. Simson, officiating magistrate of Chittagong.

Tried before Mr. S. Bowring, officiating sessions judge of Chittagong, on the 6th May 1852.

Remarks by the officiating sessions judge.—“The prosecutor stated that on the 4th Cheyt, his house was broken into, and robbed at night of property worth nearly rupees 300. He complained next day at the thanna, but no traces of his property were discovered until search was made for some stolen in another case, when some of prosecutor’s property was found in possession of the prisoners Nos. 11, 13, 14, 15 and 16. Evidence to the production of the property was given.

“The prisoner Zohirooddeen (No. 10) confessed at the thanna and before the magistrate. The prisoner Lall Mahomed (No. 13), Tossy (No. 12) and Neamut Alee (No. 15) at the thanna only. In this count all pleaded ‘not guilty.’

“The jury convicted the prisoners Nos. 10, 11, 12 and 15, of the crimes charged, and acquitted Nos. 13 and 14. Zohirooddeen (No. 10) confessed at the thanna and before the magistrate, and was convicted also in the following case. The prisoners Nos. 11 and 15 confessed at the thanna, and the property of the prosecutor was found in their possession. Against Tossy (No. 12) there was no evidence but his Mofussil confession, which I consider insufficient for conviction.

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Case of
NEAMUT ALEE
(appellant)
and others.

Sentence on a prisoner by the sessions court, of imprisonment for seven years, with labor and irons, on a conviction of knowing possession of property, which had been obtained by burglary, confirmed by the Nizamut Adawlut.

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"In Ashkur Alee's (No. 14) possession only one cloth, claimed both by him and the prosecutor, was found, and as this cloth was different from that described at the thauna by the prosecutor, the evidence was insufficient for conviction.

"Amjad Alee (No. 13) resides with Lall Mahomed (No. 11) and may have been ignorant that the stolen property was in the house; but the previous convictions recorded against all the above prisoners, and their character, as deposed to by witnesses, renders it highly probable that they all four form one gang, of thieves.

"I agreed with the jury except as regarded the prisoner Tossy (No. 12)."

Sentence passed by the lower court.—No. 10, seven (7) years' imprisonment with labor and irons, and two (2) years' in lieu of corporal punishment,—in all nine (9) years' imprisonment, and Nos. 11 and 15, each, seven (7) years' imprisonment, with labor and irons.

Remarks by the Nizamut Adawlut.—(Present: Mr. J. R. Colvin).—"The prisoner No. 15, Neamut Alee, has appealed; but there is nothing in his vague objections to the grounds of conviction to warrant interference with the judgment and sentence passed by the sessions judge. The prisoner is shown to have been before imprisoned for theft for eighteen months in zillah Tipperah. The appeal is rejected."

PRESENT :

A. J. M. MILLS, Esq., *Officiating Judge.*

TRIAL No. 1.—PALUN PESHAGUR

versus

RAMJOY NUNDEE (No. 1) AND MONEERAM DOSS
(No. 3).

TRIAL No. 2.—RAJCHUNDER SINGH

versus

RAMJOY NUNDEE.

TRIAL No. 3.—ANUNDO BOYSNOBEE

versus

RAMJOY NUNDEE.

CRIME CHARGED.—TRIAL No. 1.—1st count, No. 1, theft of property valued at rupees 345-8-0; 2nd count, Nos. 1 and 3, knowingly receiving and possessing property obtained by the above theft; and 3rd count, No. 3, privy to the above theft.

TRIAL No. 2.—1st count, theft of cash and property valued at rupees 227-4-0; and 2nd count, knowingly receiving and possessing property obtained by the above theft.

TRIAL No. 3.—1st count, theft of cash and property valued at rupees 29-12-0; and 2nd count, knowingly receiving and possessing property obtained by the above theft.

CRIME ESTABLISHED.—TRIAL No. 1.—No. 1, theft, and No. 3, knowingly receiving property obtained by theft.

TRIAL No. 2.—Theft.

TRIAL No. 3.—Theft.

Committing Officer, Mr. R. C. Raikes, magistrate of Mymensing.

Tried before Mr. R. E. Cunliffe, sessions judge of Mymensing, on the 22nd April 1852.

Remarks by the sessions judge.—TRIAL No. 1.—“The prosecutrix, a prostitute, having left her house for a short time, found on her return that her box had been broken open, and a quantity of ornaments, &c., stolen. A clue to this and the two following cases of theft was obtained by a letter written by prisoner No. 1, in jail for a theft of a similar kind, to his mother, regarding a quantity of property in his house, and, with others, having been intercepted by the kutwalee darogah. The prisoner admitted having written this letter; and the police, acting upon it, went to the prisoner's house, and demanded from the brother (No. 2 acquittal statement), a boy of about ten years of age, the property mentioned, part of which he gave up from a *petarah*

1852.

July 9.

Case of
RAMJOY NUNDEE and another.

The interception of a letter from the prisoner, in jail for another offence at the time, led to the discovery of his guilt in the present three cases, for which the consolidated sentence passed by the sessions judge was affirmed in appeal.

1852.

July 9.

Case of
 RANJOY NUN-
 DEE and ano-
 other.

belonging to his brother, and part was given up by No. 3, a relative, who had buried a portion of it. No. 1 denied having committed the theft, and claimed a portion of the property in this case as his own, and after the deposition of two or three of his witnesses had been taken and they denied all knowledge of the articles, he declined having the evidence of the others taken. No. 3 denied having possession of the property knowing it to have been stolen, and said that after No. 1 had been imprisoned, his brother, the boy, gave him these articles to keep, part of which he had buried; for No. 1, his cousin, being a thief, he was afraid his house might be searched. The *futwa* of the law officer convicts No. 1, on violent presumption of theft, and No. 3 of knowingly receiving property obtained thereby, in which I concurred, and have considered it necessary to sentence No. 1, to a severer sentence than usual, as he is an old offender, and seems to live by thefts of this description. He was first imprisoned for six months as he says for running away, on being apprehended for theft, and then for one year and nine months for theft in the house of the naib nazir of the magistrate's court; and was in jail for theft in a prostitute's house when these thefts came to light."

TRIAL No. 2.—“ In this case while the people of the house were out of the way, it was entered, and a box broken open, and a quantity of things taken away; of which, among those found, were part of the case of a silver watch, and part of the works, and a silver pencil case. The prisoner denied the charge and said the owner had charged the prosecutor, his servant, with the theft at the time, and does not know why he has been charged, and declined taking the evidence of his witnesses as they had been bought over by the prosecutor. The *futwa* of the law officer convicts the prisoner on violent presumption of theft, in which I concurred."

TRIAL No. 3.—“ The prosecutrix, a prostitute, having left her house for a short time, on her return, found her box broken open, and ornaments and money stolen. The property found, a pair of large foot bangles, was recognized as belonging to the prosecutrix. The prisoner denied the charge and said he was ill the day the robbery is stated to have taken place; but adduced no proof thereof. The *futwa* of the law officer convicts the prisoner on violent presumption of theft, in which I concurred."

Sentence passed by the lower court.—No. 1, seven (7) years' imprisonment with labor in irons, being a consolidated sentence for three offences, and No. 3, three (3) years' imprisonment, with labor without irons.

Remarks by the Nizamut Adawlut.—(Present: Mr. A. J. M. Mills.)—“ The prisoner is convicted in three cases and sentenced to the consolidated punishment of seven (7) years' im-
 pri-

sonment, with labor and in irons, to take effect from the date on which the sentence he is now undergoing will expire.

"The prisoner has urged nothing in his appeal or in his defence to impugn the evidence. An intercepted letter, which he wrote from the jail, mentioning where he had concealed and deposited various articles, led to the discovery of the stolen property. In case No. 1, he claimed the articles produced by his brother as his own; but his witnesses denied all knowledge of them; in case No. 2, he stated before the magistrate that some of the articles belonged and some did not belong to him; and in No. 3, he made a similar defence, but on the trial he contented himself with a simple denial of his guilt, and declined to have the witnesses, cited by him to substantiate his pleas, examined. The evidence leaves no doubt of the guilt of the prisoner, and the sentence is confirmed.

"The sentence passed on the prisoner Moneeram was confirmed by me on the 11th of June 1852. See Decisions for that month, page 974."

PRESENT :

J. R. COLVIN, Esq., Judge.

BEHARI ROY AND SOOPUN ROY

versus

SARUN ROY (No. 8) AND RAJROOP ROY (No. 9).

CRIME CHARGED.—1st count, No. 8, affray with wounding of Soopun Roy, and No. 9, affray with wounding of Behari Roy; and 2nd count, Nos. 8 and 9, aiding and abetting in the above.

CRIME ESTABLISHED.—No. 8, affray with wounding of Soopun Roy, and No. 9, affray with wounding of Behari Roy.

Committing Officer, Mr. R. J. Richardson, officiating magistrate of Sarun.

Tried before Mr. C. Garstin, sessions judge of Sarun, on the 7th April 1852.

Remarks by the sessions judge.—"This is the continuation of a case of affray attended with wounding decided in this court, on the 10th March last, and the following is an extract of the particulars as given in the statements for that month :

"The riot charged against this prisoner took place under the following circumstances:—A person named Foujdar Roy having obtained a decree against the prisoner and some twenty-one other parties, sued out execution on it, and in so doing attached a field of cane (amongst other property) belonging to him; upon which he, with other persons, set upon and beat the prosecutor, who, being a servant of Foujdar's, had gone with

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Case of
RAMJOY NUN-
DRE and ano-
ther.

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Case of
SARUN ROY
and another.

Sentences of
three and two
years' imprison-
ment, with
fines of twenty
and sixteen
rupees in lieu
of labor, passed
by the sessions
court on the prisoner,
convicted of
affray with
wounding, upheld
by the Nizamut A-
dawlut.

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Case of
SARUN ROY
and another.

‘ the peadas, &c., to attach the property, and beat him with a *lattee*, whilst Sarun Roy (fled) cut one of the peadas with a sword. After this the prisoner set fire to his own cane field and destroyed part of it, and some of the other rioters set fire to their own houses, and burnt down the village. In his defence the prisoner denies having beaten the prosecutor or having fired his field, and he declares that the case has been got up from enmity, but calls no witnesses to prove this. The moulvee convicts him of the first count only; and as there is no doubt of his guilt upon this count, and a conviction upon it appears to me sufficient for the purposes of justice, I have, in concurrence with the *futwa*, sentenced the prisoner as noted in the preceding column.’

“The prisoners are the parties who were then spoken of as engaged in the affair; but who for a time succeeded in eluding justice, and have only now been apprehended. Both deny their guilt, and Sarun Roy says that the case has been got up against him, because he would not give evidence for the prosecutor, whilst Rajroop states that he was at the time it occurred at a village two *cos*s distant, and he calls two witnesses to prove this; but there is no doubt of their guilt; and under these circumstances they have both (in concurrence with the *futwa*) been convicted and sentenced as noted.”

Sentence passed by the lower court.—No. 8, three (3) years’ imprisonment, without irons, a fine of rupees twenty (20) or labor; No. 2, to two (2) years’ imprisonment, without irons, and a fine of rupees sixteen (16) or labor.

Remarks by the Nizamut Adawlut.—(Present: Mr. J. R. Colvin.)—“The petitions of appeal from the petitioners contain nothing beyond what was urged on the trial. There is no proof for the prisoner No. 8; for the proceeding of commitment by the magistrate, of 31st March last, erroneously states that two witnesses, Foujdar Roy and Joogae Roy, were examined in his, the magistrate’s court, for this prisoner. The evidence of his two witnesses to the *alibi* for the prisoner No. 9 is quite untrustworthy, in opposition to the strong evidence which there has been against him from the period in which the first depositions were given in this case.

“The convictions and sentences are upheld.”

PRESENT :

A. J. M. MILLS, Esq., *Officiating Judge.*

JHAROO KYBURT

versus

DOOLARAM KYBURT.

CRIME CHARGED.—Wilful murder of Shormun Kyburt.

CRIME ESTABLISHED.—Culpable homicide.

Committing Officer, Mr. R. C. Raikes, magistrate of Mymensing.

Tried before Mr. R. E. Cunliffe, sessions judge of Mymensing, on the 26th April 1852.

Remarks by the sessions judge.—“From the evidence of the eye-witnesses and others it appears that the deceased’s cows having gone into the prisoner’s crop on a Sunday in Poos, a quarrel took place between them, and on the Tuesday following the prisoner and deceased meeting resumed the quarrel, and from the evidence of one of the witnesses it appears they challenged each other to come on, which ended in the prisoner striking the deceased with a bamboo three blows on the arms and one on the head, which knocked him down and rendered him insensible till he died, about 9 A. M., as he was being brought into the station. The prisoner also came to the magistrate about the same time, presenting a petition, and also stated in his defence that the deceased, prosecutor and others, had attacked his house, and pulled his wife out at night, on which he struck at them with the bamboo, and the reason assigned was his cows having gone into deceased’s crop, for which deceased abused him and threatened to injure his caste. He made the same defence in this court, and named witnesses to prove it, which they failed to do. The *futwa* of the law officer convicts the prisoner of culpable homicide, in which I concurred.”

Sentence passed by the lower court.—Three (3) years’ imprisonment, without irons, and a fine of rupees fifty (50), or labor.

Remarks by the Nizamut Adawlut.—(Present: Mr. A. J. M. Mills.)—“It appears from the medical evidence that the deceased died from the effects of a severe fracture of the skull.

“The prisoner has appealed, urging that he struck the deceased in defence of his wife. The plea is not substantiated by his witnesses; and seeing no reason to doubt the strong and distinct evidence for the prosecution, I reject the appeal, and confirm the conviction and sentence passed by the sessions judge.”

1852.

July 10.

Case of
DOOLARAM
KYBURT.

The sentence passed by the sessions judge on the prisoner convicted of homicide, affirmed on appeal.

PRESENT:

R. H. MYTTON, Esq., *Officiating Judge.*

CALLY SINGH

*versus*SREEMUNT DEO ALIAS CHELTOO KOOMAR (No. 1)
AND MOHUN GOMASHTA (No. 2).

1852.

July 10.

Case of
SREEMUNT
DEO and another.Riotous as-
semblage with
fire arms. Sen-
tence of five
years' impris-
onment on
the ringlead-
ers, confirmed.

CRIME CHARGED.—1st count, wilful murder of Pyaree Mohun, on 1st October 1851; 2nd count, riotously assembling and wounding and taking away Pyaree Mohun, who has not since been seen.

CRIME ESTABLISHED.—Riotously assembling.

Committing Officer, Mr. A. G. Macdonald, magistrate of Rungpore.

Tried before Mr. T. Wyatt, sessions judge of Rungpore, on the 30th May 1852.

Remarks by the sessions judge.—“From the statement of the prosecutor (a servant of Ranee Bissesshuree), and the evidence adduced on the trial, it was proved that the prosecutor, Pyaree Mohun and others, servants on the part of the Ranee above stated, lived in a cutcherry, on a jote called Bhelakobah, belonging to her; that there were also there at this time Shumsher Khan and Kader, burkundauses of thanna Sunnyassee Kattah, who had been deputed there some time before to prevent any disturbance connected with the collection of the rents of the said jote.

“On Tuesday, the 30th September 1851, Sreemunt Deo alias Cheltoo Koomar (prisoner No. 1), Mohun Gomashta (prisoner No. 2) and Bhydeb (since dead), on the part of Mokurund Deb, Rykut Zemindar (who was at great enmity with the Ranee), accompanied by a number of persons armed with swords, &c., came to the cutcherry, when the prosecutor and the others ran away; but on the morning of the following day, their assailants having gone away, they returned to the cutcherry. At midnight of that day, the prisoners and Bhydeb, with their followers, armed with matchlocks, returned to the cutcherry (some on elephants), and by order of Bhydeb, a shot was fired (by prisoner No. 1, it was alleged,) at no great distance, on the party of the prosecutor, when Pyaree Mohun was heard to make an exclamation and fall, as if wounded, the prosecutor's party all running away, when, on a burkundauz attempting to go to the assistance of the fallen man, he was driven off by the assailants, and what had become of him (Pyaree Mohun) afterwards could never be discovered.

“The evidence for the prosecution was not credited as to the fact of prisoner No. 1 having been distinctly seen to fire the

shot from an elephant, (during a somewhat moonlight night, without any other light, no torches having been present,) by which Pyaree Mohun fell, but there was ample evidence as to the identity of both the prisoners on elephants at the time, and that they had thereby joined other dependants of the zemindar before stated, in riotously assembling on the night in question at the cutcherry of the prosecutor's principal.

"The prisoners in their defence resorted to *alibi*, the evidence of whose witnesses there was less reason for believing to be true in contrast with the positive and credible testimony on the part of the prosecution.

"The *futwa* considered the prisoners guilty so far of the second count as charged them with having riotously assembled, in which I concurred."

Sentence passed by the lower court.—Each imprisonment, with labor in irons, for five (5) years.

Remarks by the Nizamut Adawlut.—(Present: Mr. R. H. Mytton).—"This is an aggravated case of riotous assembly, the party being very large and armed with guns. They might have been charged with a riotous attack by night on the zemindar's cutcherry, for which, if convicted, they would have been liable to a severe punishment. The prisoners urge nothing in their appeal to render interference with the sentence necessary. It is rejected."

PRESENT:

R. H. MYTTON, Esq., *Officiating Judge.*

REAZUDDEEN KHAN.

versus

KHETA CHUNGO.

CRIME CHARGED.—Dacoity.

CRIME ESTABLISHED.—Dacoity.

Committing Officer, Mr. A. Pigou, magistrate of East Burdwan.

Tried before Mr. J. H. Patton, sessions judge of East Burdwan, on the 3rd May 1852..

Remarks by the sessions judge.—"The prosecutor charges the prisoner with dacoity, in which property to the value of rupees 9, was plundered; and deposes that on the night of the 12th Cheyt, about midnight, his sleep was broken by the sound of blows applied to the door of the apartment in which he was sleeping. The door gave way, and some of the dacoits entered, but he contrived to pass by them, and going out, alarmed the neighbourhood. On this villagers collected and the phareedar arrived with paiks and chowkeedars. The dacoits, finding themselves discovered, and hearing the tumult outside, got alarmed

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July 10.

Case of
SREEMUNT
Deo and ano-
ther.

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Case of
KHETA CHUN-
GO.

Appeal from
a conviction
of dacoity re-
jected.

1852.

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Case of
KHETA CHUN-
GO.

and quitted the premises. The village party, headed by the phareedar, Ramkomar Roy, followed the retreating dacoits, and by their shouts collected the chowkeedars and people of the neighbouring villages, who advanced towards them. The dacoits, finding themselves hemmed in, and pressed from before and behind, got into great confusion and fled precipitately, when the prisoner coming across the phareedar received a sword-cut from him across the back, and falling to the ground was secured. The phareedar, Ramkomar, gives the same detail, and admits having struck the blow which led to the prisoner's apprehension. Five other witnesses depose to the facts stated by the prosecutor, and their evidence is clear, consistent, and conclusive. Two of the five are the persons who seized the prisoner after he had been cut down by the phareedar. The prisoner denies the charge, and avers that he was unlawfully seized by one of the witnesses for the prosecution while lying in a state of intoxication in a plain, whither he had strayed, not knowing what direction he took, and bound and carried before the phareedar, Ramkomar Roy, who in the most wanton way inflicted a sword wound on his person. He adds that the only fact to which the witnesses named in his defence can speak, is his having indulged in wine to excess in a grog-shop on the night of his apprehension. The two witnesses examined on his behalf profess perfect ignorance of the plea set up, and the prisoner declines to call more. From the clear and consistent evidence adduced on the trial it is impossible to doubt the prisoner's guilt. The particulars attending his apprehension are minutely and circumstantially detailed; and it is difficult to discredit the statements made in regard to it. His defence is worthless, and not entitled to a moment's consideration. In these days, when dacoity pervades the length and breadth of the district, I cannot bring myself to award any punishment short of the extreme penalty sanctioned by the law, and sentence the prisoner accordingly."

Sentence passed by the lower court.—Fourteen (14) years' imprisonment, and in lieu of stripes to a further period of two (2) years,—total, sixteen (16) years' imprisonment, with hard labor in irons, in banishment.

Remarks by the Nizamut Adawlut.—(Present: Mr. R. H. Mytton.)—"The prisoner's story is a very improbable one and is not supported by any evidence. On the other hand a great many persons have deposed, to his capture as described by the sessions judge. Their evidence is certainly somewhat suspiciously similar, but this circumstance alone is not sufficient to justify its rejection, seeing that it satisfied the judge, sitting on the trial, completely. The appeal is rejected."

PRESENT :

W. B. JACKSON, Esq., Judge.

GOVERNMENT

. versus

SREERAM BAGDEE (No. 1), SREENATH BAGDEE
(No. 2) AND GOPAUL DASS BYRAGEE (No. 3).

CRIME CHARGED.—1st count, highway-robbery with wounding and plundering from the palkee of Mudhoomonee Bystomee, in which she was being conveyed, property valued at rupees 514-6-0; and 2nd count, knowingly receiving and having in their possession property acquired by the above highway-robbery.

CRIME ESTABLISHED.—No. 1, highway-robbery attended with wounding, and Nos. 2 and 3, knowingly having in their possession property acquired by the above.

Committing Officer, Mr. G. Hewett, deputy magistrate, exercising powers of magistrate, Cutwa, Beerbhoom.

Tried before Mr. R. B. Garrett, officiating sessions judge of Beerbhoom, on the 12th May 1852.

Remarks by the officiating sessions judge.—“On the night of the 19th February 1852, corresponding with 8th Phagoon 1258, the palanquin of Mudhoomonee Bystomee, the mistress of Raja Bonawaree Kishore, accompanied by a man carrying a lantern, and another servant, by name Ramtunoo Dass, carrying a brass box, containing money and ornaments said to be of the value of rupees 514-6-0, was proceeding from the house of her brother, Sisteedhur Dass, to the *rajbaree*, a distance of about eight or ten beegahs, when a gang of twelve or fifteen robbers attacked the party, and after wounding the lantern-bearer, smashing the lantern, and injuring the palanquin, decamped with the box of valuables carried by Ramtunoo Dass. The palanquin is represented to have been empty, but it is more than probable that Mudhoomonee Bystomee was in it at the time; but from a disinclination to appear, caused this statement to be made.

“Ramtunoo Dass observed a portion of the gang retreating towards Nerole, whither he went early the next morning and gave notice to the gomashtha of that village. The chowkeedars and munduls were called and put on the alert; and on the following morning Kangal chowkeedar mentioned having seen the three prisoners talking together in a manner that excited his suspicions. They were immediately taken to the village cutcherry, when Sreeram Bagdee, and then the other two prisoners confessed, and each produced the property which had fallen to their share. On the darogah's arrival, on the 22nd, they all repeated their confessions; but before the magistrate Sreeram Bagdee alone adhered to his statement.

1852.

July 10.

Case of
SREERAM
BAGDEE and
others.

Conviction
and sentence
for highway-
robbery with
wounding,
confirmed.

1852.

July 10.

Case of
SREERAM
BAGDEE and
others.

"In this court the prisoners pleaded 'not guilty.'

"Sreeram Bagdee disavowed his confession before the magistrate, but cannot recollect what he said in the Mofussil. Gopaul Dass Byragee acknowledged his Mofussil confession. Sreenath Bagdee declared that he had been beaten by the raja's people.

"The *futwa* of the law officer convicts the prisoner No. 1 of highway-robbery attended with wounding, and prisoners Nos. 2 and 3, with knowingly having in their possession property acquired by the above.

"I am of opinion, that this finding is in strict accordance with the record, and therefore concur, but as there can be no doubt that the three prisoners were principals in the robbery, I see no reason why there should be any difference in the amount of punishment awarded.

"I therefore sentence them each to seven (7) years' imprisonment, with labor in irons."

Remarks by the Nizamut Adawlut.—(Present: Mr. W. B. Jackson.)—"I see no reason to interfere with the sentence passed on the prisoners Sreeram, Sreenath and Gopaul Dass.

PRESENT:

R. H. MYTTON, Esq., *Officiating Judge.*

GOOROODASS MUNDUL

versus

JOGISHUR MUNDUL (No. 1), NUBOOCOOMAR KOORER (No. 2), SOOMUNTH MUNDUL (No. 3), MUDUN MUNDUL (No. 4) AND MOHANUND KOLEA (No. 5).

1852.

July 10.

Case of
JOGISHUR
MUNDUL and
others.

CRIME CHARGED.—Wilful murder of Sreenath Mundul, son of the prosecutor.

Committing Officer, Mr. S. Wauchope, magistrate of Hooghly. Tried before Mr. E. Bentall, additional sessions judge of Hooghly, on the 6th May 1852.

Culpable homicide. Sentence, seven years' imprisonment with labor.

Remarks by the additional sessions judge.—"This case arose from a sudden dispute about the possession of a clump of bamboos and a bank of earth, which had been thrown up to support the house of one Chand Bagdee, who is a tenant of the prosecutor. Some of the prisoners were going to cut the bamboos and dig the bank, and Chand told his landlord, who came to the spot with his son Sreenath, when a dispute took place, and Sreenath was killed on the spot with blows on the head. The medical officer who examined his body stated that he had two lacerated wounds on his scalp, and that his skull was fractured, and that he also had a large bruise on the left fore-arm. Five witnesses state that they saw the prisoners Nos. 1 and 2, (pu-

nished by the court,) and No. 3 take it in turn to strike Sreenath ; but they have given their evidence so much by rote, and told their story so much in the same order, that I believe they have been taught what to say, and I have no confidence in what *most* of them state. Moreover, Chand stated that the witnesses Nos. 2, 3 and 4, did not arrive until Sreenath was dead.

"The witness No. 3, went to the thauna with the chowkeedar, who there made a deposition in which he accused the first three prisoners. He also carried a report from the gomashita, but in that no names were written, and a petition of the prosecutor, in which only the first three of the prisoners were accused. The dispute took place early in the day ; but the news of it was not taken to the thauna until 9 p. m. The distance between the two places is about five *coss*.

"The prisoner No. 1 stated in his defence, that his house was attacked by the opposite party on the day before this dispute is said to have taken place, but no complaint of the circumstance was made to the police, and his defence cannot be trusted. The prisoners Nos. 2 and 3, have endeavoured to prove *alibis*, but I see no reason for believing the evidence of their witnesses. No. 3 said that on the 26th of December, he presented a petition to the judge at Hooghly, and accordingly I sent for the petition, which is dated the 26th of December, and has the signature of the acting judge, but it was not registered on that day, although all other petitions are registered in the order in which they were presented. One petition was presented and registered on the 26th of December, but this petition was registered the last in the book after the petitions for the 31st of December. There is no accounting for this anomaly, except by supposing that the date of the petition is a forgery, and that it has been fraudulently entered in the book. The book was not signed until the 28th of February 1852, the day on which the then supposed fraud was discovered ; and an application for a copy of the petition to prove the *alibi* was not made until the 24th of February, although it would have been natural to have made it soon after the prisoner was accused. I believe that there was an affray between two parties, and that the deceased was killed in it. I have given a severe punishment, as the deceased received repeated blows, and I propose that Soomunth be also sentenced to seven (7) years' imprisonment, with labor.

Remarks by the Nizamut Adawlut.—(Present : Mr. R. H. Myton).—"This case has been referred to the Nizamut Adawlut, in consequence of a difference of opinion between the law officer and the sessions judge, as to the guilt of Soomunth Mundul, the former being for his acquittal, and the latter for conviction.

"The reason of the law officer for declaring the prisoner entitled to acquittal, was not intelligible as recorded in the *futwa*,

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June 10.

Case of
JOGENDER
MUNDUL and
others.

1852.

July 10.

Case of
JOGISHUR
MUNDUL and
others.

and the sessions judge, in his letter of reference, pronounced that he could not believe the evidence of most of the witnesses, but without naming those whom he disbelieved. The law officer was, therefore, called upon to state distinctly his reasons for acquittal, and the judge to mention on whose evidence he relied in support of the conviction he recommended.

"The law officer explains that he considers Soomunth entitled to acquittal, because there is discrepancy in the evidence of *his* witnesses, some saying that on the day of the occurrence he was on the spot, some, that he was at a distance.

"The judge has not replied directly to the inquiry from this court, inasmuch as he has not stated on whose evidence he relies in support of the conviction which he recommends, but mentions that the witnesses on whose evidence he convicted other prisoners were Nos. 5 and 6. However, it may be inferred, that it is by these witnesses that he considers the guilt of Soomunth to be proved.

"The prisoner has been defended in this court by Baboo Sreenauth Sein. He relies on the proof of *alibi* afforded by the petition, purporting to have been filed in the judge's court on the day of the occurrence. The order on this, bearing date the 26th December, bears no signature of the mohurir, and the sessions judge shows, by other circumstances, that fraud, as regards the filing this petition, is palpable. An officer of the civil court was made over to the magistrate for trial in consequence. The reasons given by the law officer for acquittal, are extraordinary. Discrepancy in the evidence of a prisoner's witnesses rather tend to throw doubt on the defence than on the prosecution. Possibly he did not mean his (prisoner's) witnesses, but the witnesses who named him. The evidence of Nos. 5 and 6, however, is conclusive as to the prisoner's guilt; he is therefore convicted of culpable homicide and sentenced to seven (7) years' imprisonment, with labor."

PRESENT:

W. B. JACKSON, Esq., Judge.

MUNSARAM GARROW, ON THE PART OF MUSST. JEN-
GRENG GARROWNEE,

versus

DABUN GARROW (No. 1), MEGHA GARROW (No. 2)
AND PURNAH HODEE (No. 3).

CRIME CHARGED.—1st count, burglary, by cutting the *tallee* of the house of the prosecutor's mother-in-law and theft of property valued at rupees 210-10-0; and 2nd count, knowingly receiving and possessing property obtained by the above theft.

CRIME ESTABLISHED.—Nos. 1 and 3, burglary and knowingly receiving property obtained thereby, and No. 2, knowingly receiving stolen property.

Committing Officer, Mr. A. Abercrombie, officiating magistrate of Mymensing.

Tried before Mr. R. E. Cunliffe, sessions judge of Mymensing, on the 4th May 1852.

Remarks by the sessions judge.—“The prosecutor's house was entered on the night of the 30th October, by cutting the mats, and a large quantity of property taken, consisting of brass and other ornaments worn by Garrows, large metal vessels, &c.; about a month after she saw a neckless like one of those stolen on the neck of No. 2's nephew, on which he was apprehended, and gave up part of the property, some of which was buried, and his answer led to the apprehension of Nos. 1 and 3, and the former, an old offender, confessed in the Mofussil and before the magistrate committing the burglary, and part of the property was given up by the mother-in-law. No. 3 also confessed in the Mofussil and before the magistrate, and said he had been beaten by the jemadar. Before this court the prisoners merely named witnesses to character, who deposed in their favor. The *futwa* of the law officer convicts Nos. 1 and 3 of burglary and knowingly receiving property obtained thereby, and No. 2 of knowingly receiving property obtained by burglary, in which I concurred. No. 1 has been imprisoned before for two (2) years for the same crime.”

Sentence passed by the lower court.—No. 1, seven (7) years' imprisonment, with labor in irons; No. 2, three (3) years' imprisonment, with labor in irons; and No. 3, five (5) years' imprisonment, with labor in irons.

Remarks by the Nizamut Adawlut.—(Present: Mr. W. B. Jackson.)—“I see no reason to interfere with the finding of the

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Case of
DABUN GAR-
ROW and
others.

The sentences passed by the sessions judge, on two of the prisoners convicted of burglary, and knowing receipt of property obtained thereby, were mitigated by the Nizamut Adawlut on appeal.

1852.

July 10.

Case of
DABUN GAR-
ROW and
others.

sessions court as regards the prisoners Dabun, Megha and Purnah; but the sentence appears to me too severe for simple burglary of property worth rupees 210. I sentence Dabun, (before convicted) to five (5) years' imprisonment, and the other two to three (3) years' each, all with labor in irons."

PRESENT :

W. B. JACKSON, Esq., Judge.

EESHUR KAMAR

versus

SHUSHTEERAM GHOSE CHOWKEEDAR.

1852.

July 13.

Case of
SHUSHTEE-
RAM GHOSE
CHOWKEE-
DAR.

Conviction
and sentence
passed upon
the prisoner
for dacoity
affirmed.

CRIME CHARGED.—1st count, dacoity in the house of the prosecutor, in which property to the value of rupees 105-2-0 was plundered, being at that time employed as a police chowkeedar; and 2nd count, accomplice in the above dacoity while employed as a chowkeedar.

CRIME ESTABLISHED.—Dacoity in the house of the prosecutor, in which property to the value of rupees 105-2-0 was plundered, being at that time employed as a police chowkeedar.

Committing Officer, Mr. C. F. Montresor, magistrate of Nuddea.

Tried before Mr. J. C. Brown, sessions judge of Nuddea, on the 8th May 1852.

Remarks by the sessions judge.—“The prisoner has been convicted on his own confession, voluntarily made by him to the police darogah and repeated before the magistrate in the presence of credible witnesses, and the finding in his house the head of a small axe or hatchet with the wooden handle broken short off, the remaining part of which was found on the premises of the prosecutor, exactly fitting the broken part. The prisoner pleaded having been on duty as chowkeedar of Bedoowa, distant about a *coss* from the prosecutor's house, and named three persons to prove an *alibi*.

“Of these, two gave testimony against him, declaring he was not at his post on the night in question, and the prisoner declined examining the third witness. The prisoner was not suspected at first, but being the chowkeedar of a neighbouring village was, amongst others, ordered by the darogah to try and find out the perpetrators of the dacoity, upon which he showed a wound on his right hand, and declared he received it by accident in breaking open a chest during the dacoity.”

Sentence passed by the lower court.—Nine (9) years' imprisonment and two (2) years in lieu of corporal punishment,—total, eleven (11) years' imprisonment, with labor in irons, in banishment.

Remarks by the Nizamut Awlut.—(Present Mr. W. B. Jackson.)—"I see no reason to interfere with the sentence passed on the prisoner Shushteeram, Chowkeedar."

1852.

July 13.

Case of
SHUSHTEE-
RAM GHOSH,
CHOWKEE-
DAR.

PRESENT:

SIR R. BARLOW, BART., *Judge*.

GOVERNMENT

versus

UDHEEN (No. 11), CHURN SINGH (No. 12) AND NUND
PANDAY (No. 13).

CRIME CHARGED.—No. 11 perjury, in having, on the 20th January 1852, deposed, under a solemn declaration taken instead of an oath, before the magistrate of Behar, that 'this man is Joykurn Singh, but not Sobkurn Singh; I have known him (Joykurn Singh) for a long time; he formerly lived in my village and his father's name is Opdee Singh, and the father's name of Soobkurn Singh, who has eluded the pursuit of justice, is Soodee Singh', such deposition being false, and having been intentionally and deliberately made on a point material to the issue of the case. No. 12, perjury, in having, on the 20th January 1852, deposed, under a solemn declaration taken instead of an oath, before the magistrate of Behar, that 'this man's name is Joykurn Singh, but not Soobkurn Singh; and that since Soobkurn Singh had escaped after perpetrating the murder of Ramsuhoy, he never returned, and this Joykurn Singh formerly lived in my village, had absconded from thence seven years ago, and his father's name is Oodee Singh, but the name of the father of Soobkurn Singh is Soodee Singh,' such deposition being false, and having been intentionally and deliberately made on a point material to the issue of the case; and No. 13, perjury in having, on the 20th January 1852, deposed, under a solemn declaration taken instead of an oath, before the magistrate of Behar, that 'I do not identify this man, and that I can affirm that he is not *that* Soobkurn Singh, and I have never before been acquainted with this man, and the man whose name I had before mentioned was of a high stature, fair complexion, and moderate size,' such deposition being false, and having been intentionally and deliberately made on a point material to the issue of the case.

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Case of
UDHEEN and
others.

*Conviction
of perjury up-
held, but sen-
tence mitigat-
ed.

CRIME ESTABLISHED.—Perjury.

1852.

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Case of
UDHEEN and
others.

Committing Officer, Mr. F. C. Fowle, magistrate of Behar.

Tried before Mr. T. Sandys, sessions judge of Behar, on the

24th April 1852.

Remarks by the sessions judge.—“In September 1847, one Ramsuhoy Singh, of Akormee, was killed by a blow of a *lattee* in a village squabble. From the first Soobkurn Singh was accused of having struck the blow, but Tiluck Singh (witness No. 5) was committed to the sessions as ‘an accomplice and privy to the murder,’ and acquitted, (*vide* acquittal statement for December 1847). From 1847 to December 1851, Soobkurn eluded the pursuit of justice, until apprehended, brought to trial, and convicted of the culpable homicide of Ramsuhoy Singh, as shown in the foregoing trial.

“Churn Singh (prisoner No. 12) and Nund Panday (prisoner No. 13), were the only two eye-witnesses on the original trial of Tiluck Singh, and, as well as Udheen Dosadh (prisoner No. 11), witness No. 9 of that trial, swore to Soobkurn Singh’s having struck the mortal blow. On Soobkurn’s apprehension in December last, joining in the pretence set up of his personating Joykurn, they deposed accordingly, and swore that he was not the fugitive Soobkurn.

“On Soobkurn’s trial, his personation of Joykurn was fully proved to be false, and the prisoners now stand arraigned for having perjured themselves in recognizing Soobkurn as Joykurn, and swearing that he was not the Soobkurn, whom, in 1847, they had originally deposed to as having struck the fatal blow.

“The whole village of Akoormee (a small Rajpoot one), represented by eleven witnesses before this court, witnesses Nos. 5 to 15 inclusive, not only swear to their recognition of this person as the Soobkurn who killed Ramsuhoy, but also that no such person as Joykurn, ever resided in their village.

“Udheen (prisoner No. 11) confessed before the magistrate, but would neither plead guilty, or not guilty, before this court, until with the close of the trial, when called on for his defence, he pretended that he knew this person by both the names of Soobkurn and Joykurn.

“Churn Singh’s (prisoner No. 12) defence before the magistrate, is almost tantamount to a confession. He acknowledged having been bewildered, and excused himself for defective recognition, owing to weakness of sight. He repeated the same pretence of weakness of sight before this court, and adds (like prisoner No. 11) that he knew this person by both the names of Soobkurn and Joykurn.

“Nund Panday (prisoner No. 13) perseveres to the last, in declaring that this person, whose name whilst in duress he has learnt to be Joykurn, is not the Soobkurn who killed Ramsuhoy.

“The prisoners called no witnesses.

"The *futwa* of the law officer convicts all three prisoners of perjury, and declares them liable to extreme discretionary punishment by *biseyar tazeer*.

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Case of
UDHEEN and
others.

"The facts of the prosecution are as positively brought home as the defence set up by each prisoner is worthless and self-condemnatory. The prisoners' guilt is aggravated by their wilful and daring attempt to set the ends of justice at defiance, by screening a fugitive criminal. Exemplary punishment is indispen-
sable in such a case; and accordingly, concurring in the conviction of the three prisoners, they have been sentenced alike as within, as I can distinguish little difference in their guilt respectively, whether as regards Churn Singh, as a respectable villager, or Udheen and Nund Panday, as village officials, on the occasion of Ramsuhoy Singh's death."

Sentence passed by the lower court.—Each, seven (7) years' imprisonment, with labor and irons in banishment.

Remarks by the Nizamut Adawlut.—(Present: Sir R. Barlow, Bart.)—"I am of opinion, that the prisoners are rightly convicted of perjury. The prisoner Soobkurn, who absconded but has since been convicted by the Nizamut Adawlut, was well known to the prisoners in this case. They endeavoured to screen him under another name, but his person was identified, and it has been fully established that there was but one Soobkurn in Akoormee, the village in which the murder was committed. I therefore uphold the conviction, and sentence the prisoners to five (5) years' imprisonment, with irons and labor."

PRESENT :

J. R. COLVIN, Esq., *Judge.*

VAKEEL OF GOVERNMENT

versus

GOOROODOSS MITTER, GOMASHITA (No. 1), RAMFUL OOPADHEA (No. 2), DEBEEDIN PANDAY (No. 3), BEYCHOO KAGCHEE (No. 6) AND GOLLAMEE KAGCHEE (No. 10).

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Case of
Gooroodoss
and others.

Three parties acquitted, who had been convicted by the sessions court of affray with culpable homicide, as, though they might have been punishable, in due course of law, for any illegal act committed by them, they were justified in repelling a forcible and tumultuous attack which was made on the buildings in which they were, one of their companions being killed in that attack.

Conviction and sentence on two of the attacking party upheld by the Nizamut Adawlut.

CRIME CHARGED.—Affray attended with the culpable homicide of Futteh Khan Nugdee.

CRIME ESTABLISHED.—Affray attended with the culpable homicide of Futteh Khan Nugdee.

Committing Officer, Moulvee Wuheedoon Nubee, deputy magistrate of Hooghly.

Tried before Mr. E. Bentall, additional sessions judge of Hooghly, on the 29th April 1852.

Remarks by the additional sessions judge.—“The origin of this crime could not be directly declared by the witnesses for the prosecution, but from the evidence for the prosecution, and from the defence, it appears to have arisen in the following manner: Gooroodoss (prisoner No. 1) was a zemindar's gomashita, stationed at a cutcherry in the village of Gungusnugur, generally having under him only one Nugdee, called Futteh Khan. On the 29th of February last, two other servants of the zemindar, viz., prisoners Nos. 2 and 3, who are up-country men, arrived at the cutcherry, with instructions to the gomashita to send a certain sum of money by them; but the gomashita had not got so much money in hand, and sent out and apprehended two persons viz., the prisoners Nos. 8 and 9, (acquitted on trial,) and tied them at the cutcherry, and in order to rescue these two persons, the villagers collected, and riotously attacked the party of Nugdees who were assembled at the cutcherry. In the riot several persons were wounded, and among them was Futteh Khan Nugdee. He was sent to the Inaambarah hospital on the 3rd of March, and died on the evening of the 6th of March. The direct cause of his death was a fracture of his skull and a coagulum of blood, half as large as a hen's egg, pressing on his brain, and he is by no means likely to have recovered if he had been brought to the hospital without delay. It is shown by the evidence of three or more witnesses, that the prisoners Nos. 8 and 9, were tied at the cutcherry, and that at the time the prisoner No. 1, who is the gomashita of the cutcherry, was present, and consequently it

is clear that his oppression was the cause of the riot at which he was present, The gomashita could not have acted as he did, without relying on the prisoners Nos. 2 and 3, who were armed up-country men, and who took an active part in the riot. The prisoners Nos. 6 and 10, were on the side of the villagers, who went to the rescue of those who had been tied up at the cutcherry."

Sentence passed by the lower court.—No. 1, to be imprisoned with labor for seven (7) years, Nos. 2, 3, 6 and 10, to be imprisoned with labor for five (5) years each.

Remarks by the Nizamut Adawlut.—(Present: Mr. J. R. Colvin.)—"This is not a case of affray, but of retaliating attack by the villagers of Gungusnugur upon the cutcherry of the prisoner, No. 1 Goroodoss Mitter, gomashita, who had detained, and, as it is alleged, ill-used, two of the *ryots*, Pitumber and Neelmoney Coura. Though the gomashita and his servants, the prisoners Nos. 2 and 3, are liable to punishment upon proof of any illegal violence which they may have committed upon those two parties, the villagers could not be justified in the forcible and tumultuous attack which they made upon the cutcherry, and the gomashita and his attendants were justified in repelling that attack, in which one of the cutcherry nudgees was killed.

"The prisoners Nos. 1, 2 and 3, are, therefore, not punishable upon the charge of affray, and are accordingly acquitted.

"There is no ground for interfering with the conviction and sentence on the prisoners Nos. 6 and 10, Beychoo Kagehee and Gollamee Kagehee, who were of the attacking body of villagers."

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Case of
Goroodoss
and others.

PRESENT:

A. J. M. MILLS, Esq., *Officiating Judge.*

GOVERNMENT

versus *

ON THE ONE SIDE—SHEWLAL SINGH (No. 1), ZUMORUD KHAN (No. 2), GOLAM ALEE KHAN (No. 3), LEDOO KHAN (No. 4), KUNHYE KOORMEE (No. 5), RUGHOOBEER SINGH (No. 6) AND RAMDOUR TEWAREE, BRAHMIN (No. 7).

ON THE OTHER SIDE—RAY JUNARDHUN SHOME (No. 8), BOODHUN KOEREE (No. 9), PUNCHUM KOEREE (No. 10), SOBRUN KOEREE (No. 11), SUEFOO DURZEE (No. 12), IDOO DURZEE (No. 13), KHEEROO DURZEE (No. 14), MUNGUR DURZEE (No. 15), RUMZANEE DURZEE (No. 16), BUXU DURZEE (No. 17), FYEZ ALEE DURZEE (No. 18), CHOOLHAE DURZEE (No. 19), JEETOO KOEREE (No. 20) AND KHERODHUR KOEREE (No. 21).

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Case of
SHEWLAL
SINGH and
others.

The prisoners sentenced were convicted of affray attended with severe wounding.

CRIME CHARGED.—1st count, Nos. 1 to 21, affray, in which Boodhun Koeree and Zumorud Khan were severely, and Punchum Koeree, Sobrun Koeree, Golam Alee Khan, Ledoo Khan, and Kunhye, were slightly wounded; 2nd count, Nos. 1 and 8, being ringleaders, and causing the said affray; and 3rd count, No. 1 severely wounding the said Boodhun Koeree with a sword, which nearly severed his left arm and endangered his life.

Committing Officer, Mr. F. C. Fowle, Magistrate of Behar.

Tried before Mr. T. Sandys, sessions judge of Behar, on the 14th May 1852.

Remarks by the sessions judge.—“Junardhun Shome, a Bengalee, (prisoner No. 8,) is a resident manager on the part of Raja Gourbullubh, a Bengalee absentee owner of landed estates in this district, and amongst others that of Munkosee, of which place prisoners Nos. 9 to 21 inclusive, are either cultivators or residents. Shewlal Singh (prisoner No. 1), as also Junardhun Shome (prisoner No. 8), reside in different villages in the neighbourhood, where Shewlal Singh, either as a proprietor or leaseholder, is a person of considerable local influence. All these places are only a few miles distant from Gyah, and a like distance from each other.

“Previous to the occurrence under trial, Shewlal Singh had set up claims to the possession of Munkosee, in right of a lease, said to have been granted to him by Junardhun Shome, commencing 1259 F., and being opposed by one Nazir Alee, holding a lease directly from the proprietor, Raja Gourbullubh, commencing

the same year, led to a trial of the dispute under Act IV. of 1840, when Nazir Alee's possession was upheld by the magistrate's decision of 19th September last. In appeal the magistrate's order was revoked on 22nd October last, under a misapprehension of Circular Order No. 1307, 30th May 1851, the hearing of the matter in dispute relative to the thirteen annas share (undivided) of an estate, being thereby considered inadmissible. This occasioned a correspondence* which, on 14th February last, ended in the confirmation of the magistrate's decision of 19th September last. It may here be noted that both

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* *From the Magistrate of Behar to the Sessions Judge of Behar, No. 424, dated the 18th November 1851.*

"I have the honor to acknowledge the receipt of your *roobukaree* of the 22nd ultimo, in which you have reversed my order passed on the 19th of

* Syud Nazir Alee, Plaintiff,
versus
Shewlal Singh, Defendant.

September 1851, regarding a case noted in the margin,* upon the grounds of the Sudder Court's Circular No. 1307, of the 30th May 1851.

"Your orders have been fully complied with, but I am of opinion that the Circular Letter above alluded to does not affect the case in question, and as many suits of like nature will be instituted in this court, I shall be glad if you would refer the question to the Nizamut Adawlut, in order that I may be guided accordingly in my future disposal of such cases.

"The Sudder Court have ruled in their Letter No. 1307, 'that claims to portions of joint undivided estates cannot be heard under Act IV. of 1840, referring to claims to the money rent of a fractional portion of an undivided estate,' and again that 'such claims can arise only among co-sharers or the representatives of co-sharers.' Now the case instituted in my court, (and in which I gave possession to Nazir Alee, he having produced sufficient proofs of having received from the Raja Gourbulubh, the theekadar,) was not a dispute between co-sharers or their representatives, but between two different individuals, each claiming only the *theekadaree* of a certain portion of the estate. From your *roobukaree* it is not shown who is to take possession of the disputed property, and therefore the disagreement between the parties will be heightened rather than diminished, and a breach of the peace not unlikely to occur. I shall, therefore, be obliged if you would, as soon as possible, obtain the opinion of the Nizamut Adawlut as to whether I am in future to entertain cases of a similar nature under Act IV. of 1840.

"The proceedings are herewith sent for the inspection of the Court of Nizamut Adawlut."

From the Sessions Judge of Behar to the Magistrate of Behar, No. 249, dated 1st December 1851.

"I have the honor to acknowledge the receipt of your letter No. 424, dated 18th ultimo, and in reply to state that your view of the case of Nazir Alee, therein referred, is undoubtedly the correct one. In passing the decision I did, I overlooked the explanation conveyed in the Court's letter No. 1307 of 30th May 1851, to the Sudder Board of Revenue, that 'such claims can arise only among co-sharers or the representatives of co-sharers.' Nothing of the kind exists in the instance of Nazir Alee, as both parties contended that they held their leases from one and the same shareholder, viz., Raja Gourbulubh, the thirteen annas shareholder. My decision, therefore, is manifestly faulty.

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trials, whether originating in the Act IV. suit or the present one, establish that Shewlal's claim is solely grounded on a bond, dated 26th November 1850, No. 42, for rupees 200, borrowed from him by Junardhun Shome on his employer's behalf, under certain conditions, contained in an agreement, dated 12th October 1850, (No. 41,) promising the lease of Munkosee, &c., from 1259 F., and on failure to grant one in due form, the document itself to be held good to that effect,—the re-payment of the loan, however, being held dependant on the result of an appeal then pending before the Sudder Dewanny Adawlut, and subsequently disposed of by an order for re-investigation, 28th February 1851, (No. 47.) These documents purporting to have been duly registered, stand on record in the present as on the former trial unquestioned, and from first to last have never been directly denied by Junardhun Shome, though he sets up the pretence, and then not until he is questioned, that he did not possess the power to grant leases of villages on his employer's behalf, an allegation also, which Shewlal has never troubled himself to disprove.

“ The persons wounded on the Munkosee side are Boodhun Koeree (prisoner No. 9), severely, and Punchum (prisoner No. 10) and Sobrun Koeree (prisoner No. 11), slightly. Their and their witnesses' (Nooree (witness No. 1), Sobhee (witness No. 2) and Toree (witness No. 3),) account of the occurrence is, that on the forenoon of 24th November last, Shewlal Singh heading a large body of men from his own and the neighbouring villages, commenced cutting their Munkosee crops, and on Boodhun's remonstrating, Shewlal Singh himself cut down Boodhun with his sword, and others wounded Punchum and Sobrun, when Tekun Khan burkundauz arriving, he arrested both sides on the spot.

“ On Shewlal Singh's side Ramdour Tewaree, generally styled a Tilunga, and who described himself as Shewlal Singh's servant, held to very indifferent bail, and to which the magistrate's attention has been directed, absconded before the sessions trial commenced, and has not been re-captured. The rest, Zumorud Khan (prisoner No. 2), his son Golam Alea (prisoner No. 3), Ledoo

“ I would have applied for permission to review my decision, had not such a course been declared inapplicable to cases under Act IV. of 1840, by the Sudder Nizamut in full court, (their No. 1177 of 29th August 1845, to this court.) Appeals in such cases also do not lie to the Sudder Nizamut Adawlut, case of Dooleh Debia, *versus* Mr. Dalrymple, decided by Nizamut Adawlut on 6th September 1851. Under such circumstances, I do not observe what other remedy is open, than that of recalling my orders of the 22nd October last, as illegal, and which in that case, as observed by the Sudder Nizamut Adawlut, (their No. 657, 14th July 1851,) in the case of Sreckissen Singh, appellant, I can do of my own authority.

“ The requisite proceedings, therefore, recalling my orders of the 22nd October last, accompany, which will thus leave your original decision *statu quo*, appealable *de novo* on its merits.”

Khan (prisoner No. 4) and Kunhye (prisoner No. 5), were slightly wounded. They are all residents of different places, call themselves Shewlal Singh's servants, and are recorded turbulent characters. Their and their witnesses' (Muen Singh (No. 4), Kunhye Singh (No. 5), Gurbha Roy (No. 6), Rutee Singh (No. 34), Birjoo Gwala (No. 35), Jehul Soonree (No. 36),) version of the occurrence is, that they held charge of Munkosee as employed by Shewlal Singh, when the Munkosee people, headed by Junardhun Shome, commenced cutting the crops, and on their opposing, or, as some say, telling them to wait the burkundauz's arrival, they attacked and beat them, until the burkundauz, Tekun Khan (witness No. 7), arrived and apprehended both parties on the spot. Zamorud had appeared at the thanna the previous evening, the 23rd, (No. 1), with information of an affray being premeditated by Junardhun, which led to Tekun Khan's deputation, and his singular arrival at the spot immediately after the occurrence, though, as he states, without finding any one armed. Tekun Khan (witness No. 7) and the two chowkeedars who accompanied him, (witnesses Nos. 8 and 9), depose to the arrest of all the prisoners on the spot, within the Munkosee fields, where the crops had been cut here and there, in scattered portions.

"Shewlal Singh (prisoner No. 1) pleads, that he was first in waiting at the thanna in anticipation of Tekun Khan's deputation, which being delayed, he spent the night, the 23rd, at Gyah, and the next morning, on hearing of the occurrence, started for Munkosee on horse-back, and had nearly reached the place, when the burkundauz apprehended him. He declares the lease in Nazir Alee's name is in reality that of his relative Koorsheyd Alee, a vakeel in the principal sudder ameen's court, (witness No. 57), called in support of Junardhun Shome's *alibi*, in collusion with Junardhun Shome; not improbable, with regard to the notoriety of this person's character, though pertinaciously denied by him whilst under cross-examination by Shewlal Singh, and who never troubled himself to support such allegation in any other manner.

"Junardhun Shome denies ever having been present at Munkosee. The day of the occurrence he was at Selimpore, and as usual left to attend the principal sudder ameen's court, when information of the occurrence reached him, as the parties apprehended were being taken to the thanna. This Selimpore is another of his employer's villages, distant about a mile from Munkosee, with which and other villages, it stands named in Shewlal's documents as included in his lease. A complaint of an attempt by Shewlal to turn Junardhun out of this place, was made by a servant of the latter, on 28th October 1851, but which never came to a hearing, Shewlal's reply thereto being filed, with

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reference to the occurrence under trial, as late as 20th November following, wherein he declared himself in full possession of Selimpore and its catchery. The burkundauz, Tekun Khan, in his progress to Munkosee, passed through and rested at Selimpore during the night; but strange to say, either according to the burkundauz himself or Junardhun's witnesses, neither Junardhun nor himself took any notice of each other!

"All the other prisoners who do not acknowledge the occurrence to have taken place in their presence, set up *alibis*, calling a host of witnesses in support of them. All on the Munkosee side, mostly durzees, to the effect that they were at work in Gyah, and hearing a fire had taken place at Munkosee, had hurried there to look after their effects, and were apprehended by Tekun Khan.

"The *fatwa* of the law officer, noting the wounds inflicted on both sides, the apprehension of most of the prisoners on the spot by the burkundauz, and attributing Junardhun's escape to his greater cunning, distrusting the *alibis* as so easily got up with regard to localities, and the support of persons of such means as the two ringleaders, without whose instrumentality no such assemblage could have taken place, convicts all the prisoners of affray, Shewlal and Junardhun as ringleaders on the second count, and Shewlal of severely wounding Boodhun (prisoner No. 9) on the third count.

"I do not find the evidence on either side to be sufficiently trustworthy to maintain so full a conviction. It is of the usual kind generally forthcoming in such cases. Each side swears to the guilt of the opposite party; each accuses the other's witnesses of having been active in the affray; each acknowledges the burkundauz's arrival and the capture of their opponents, though I do not regard his conduct as altogether free of suspicion, either as regards his nicely-timed arrival, or the easy capture of so many belligerents on the spot. Each is unable to account for the wounds received by the opposite party, though when the case reached this court, an absurd concoction was got up, contrary too, to what had been urged in the first instance, as to the wounds on Junardhun Shome's side having been self-inflicted, supported by the witnesses Ujoodhega (witness No. 33), Kisbee (witness No. 34), Brijoo (witness No. 35), Jehul (witness No. 36), that Subdee (witness No. 2) had accidentally wounded Boodhun: either *one or the other* improbable, looking at the nature of the wound itself. A single witness has not been brought forward who is not manifestly mixed up with one or the other of the adverse parties. On the Munkosee side all the witnesses are residents of that place. On Shewlal Singh's side all are residents of different villages in the neighbourhood where he is influential, and who give plausible pretences, though too flimsy to be credi-

ble, for passing by at the time of the occurrence. I quite agree with the law officer that the testimony on either side as regards the *alibis* set up by any of the prisoners, is undeserving of any consideration. Such results make me revert to the principle. (Nizamut Adawlut Reports, volume 3, page 221,) that they 'are no grounds for acquittal in such cases; but that credit should be given to that which appears best supported by the circumstances of the case.' These in the present instance force me to the conclusion that a greater degree of truth exists on the Munkosee than on Shewlal Singh's side. I consider Shewlal and his mercenaries, prisoners Nos. 2, 3, 4, 5 and 6, in the spirit of Section II. Regulation VII. of 1828, as 'wilful trespassers,' who illegally and unnecessarily attacked the Munkosee cultivators, whilst endeavouring to protect their own crops, thus, 'in the just defence of their property,' their bare means of subsistence during a scanty year, 'legally resisting aggression in self-defence.' The fact is acknowledged on all sides that the occurrence took place within the Munkosee fields, where a forcible cutting of the crops had commenced. The Munkosee cultivators had as indefeasible a right either to cut or protect their own crops, as Shewlal Singh's interference, under any circumstances short of attachment, is indefeasible; for if in possession, which I do not credit, he had ample legal summary remedies against the cultivators for rent. On the Munkosee side none are accused or wounded, who are not either cultivators or residents of Munkosee, and the three wounded men on the Munkosee side are not named by Shewlal Singh's party as active in beating them; but others, especially Suefoo (prisoner No. 12) and his son Fyez Aleo (prisoner No. 18), against whom Zumorud (prisoner No. 2) has an old recorded grudge. On Shewlal's side all the wounded men are hirelings for the occasion, notorious violent men, than whom Shewlal Singh, also, from their previous history and connexion with Munkosee, could not have selected others more personally obnoxious* to the Munkosee people. Doctor Diaper deposed that all the wounds received by Shewlal's hirelings were 'superficial, little more than skin deep.' They are all described as 'lacerated' wounds, except Ledoo Khan's (prisoner No. 4), 'a small incised wound, dividing the scalp,' which he himself describes as having been inflicted by an iron-bound club. It may therefore be reasonably inferred that the Munkosee people made use of their sticks ordinarily in their hands in self-defence, and that

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* They allege Boodhun (prisoner No. 9), is no better. He was imprisoned five (5) years in a case of culpable homicide, in which death was caused by a heavy *lattee* blow on the head, originating out of a grazing dispute. *Vide* abstract of prisoners punished for August 1841. It is not improbable the Munkosee spokesman on such an occasion would have been selected as the boldest and most experienced character amongst them.

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with no degree of violence, whereas, Boodhun's cruel wound 'on the inner side of the left fore-arm,' nearly severing it and depriving him of the use of his left hand for life—'the lower portion of the limb remaining attached to the upper simply by means of the skin, radial artery, and a few flexor tendons on the 'radial side,' from its violence and position speaks for itself 'as most probably received in attempting to ward off a sword-blow from the head,' and in the total absence of any other wounds on his person besides two trivial scratches, goes far to corroborate the story on his side that he was cut down whilst unarmed and defenceless, in the act of remonstrance; with any weapon in his right hand he would scarcely have voluntarily exposed his bare left arm to a sword blow; neither from the position of the wound do I observe that it could have been easily inflicted in mutual conflict. Had Shewlal been ever in legal possession of Munkosee, occurrences of such a nature would of themselves have condemned him, but when I find every reason to believe that his possession of Munkosee, from first to last, has been nominal instead of real, his conduct appears in a still more criminal light. There is nothing in the nature of the title under which he claims to hold, which would excuse the manner in which, for months prior to the occurrence, he had endeavoured to obtain forcible possession thereof, *vide* Sufoo Khan's and others', *ryots* of Munkosee's, complaint on 19th August 1851, and of Chumaree Pashan on 28th October 1851. With his title thus questioned from the first, he had an immediate and legal remedy at law, without having recourse to any kind of violence, but his tactics throughout appear to have been to maintain his claims out of court by force of his own local name and influence. The absurdity of his possession on the day of the occurrence is pretty well exposed by his own people. Zumorud and his companions were not then located at Munkosee; but according to themselves went to the Munkosee fields from the neighbourhood, on hearing that the Munkosee cultivators were cutting their crops. According to them Kunhya Singh (witness No. 5) was the only person then present at Munkosee, on Shewlal Singh's behalf, living there in the house of one Gopal Lal, and which is as stoutly denied by the Munkosee people. According to himself, this worthy village superintendent knew nothing more of what was thus passing in his adopted village than any indifferent eye-witness. His master's retainers had come from outside, and were acting of their own accord, and not on his orders. As to Zumorud's information at the thanna the evening before, it was, doubtless, intended to screen what followed, believing, as I do, that the riot was premeditated by his employer, and was followed too soon by the occurrence itself for the Munkosee people to have been aware of it. Thus viewing the case,

and without resting altogether on the evidence produced, I convict the prisoners on the lower offence than that for which they stand indicted *viz.*, riot. Shewlal Singh as ring-leader of riot in which Boodhun was severely and others slightly wounded, and prisoners Nos. 2 to 6, as his followers therein, and would propose the former being sentenced to five (5) years' imprisonment in labor and irons, and the latter each to three (3) years', and rupees fifty (50) fine in lieu of labor. And highly as I deprecate Junardhun Shome's duplicity, as causing, however little it can excuse, Shewlal's conduct, yet under the view thus adopted, untangible in the present trial, he, as well as the remaining prisoners Nos. 9 to 21, inclusive, are entitled to their acquittal."

Remarks by the Nizamut Adawlut.—(Present: Mr. A. J. M. Mills.)—"This is an embarrassing case. The witnesses on either side depose to the truth of the statements put forward by their respective employers, with marked partiality and unfairness. They depose to the opposite party causelessly attacking and wounding unarmed persons on their side, while remonstrating against an unlawful aggression, and profess entire ignorance of the wounds received by the former. Such evidence must be regarded with distrust, and can only be accepted when supported by the strong probabilities of the case.

"As regards the origin of the affray, it appears that disputes existed between the prisoner Shewlal and Nazir Alee regarding the possession of the village of Munkosee. The magistrate upheld the possession of the latter. In appeal the sessions judge, under a misapprehension of Circular Order No. 1307, dated 30th of May 1851, rescinded this award, leaving the question of possession undetermined. Matters were in this unsettled state; Shewlal endeavouring to gain possession, and the *ryots*, backed by the zemindar's agent, the prisoner Rai Junardhun Shome, resisting it; when, on the evening before the occurrence, Zumorud Khan (prisoner No. 2) lodged information at the thanna that Junardhun Shome was about to carry off the disputed crop by force, and that an affray would, in all likelihood, ensue.

"There is no proof on the record that Shewlal ever had possession of Munkosee; his possession was, as remarked by the sessions judge, a nominal and not a real possession, and certainly he had no right to interfere with the cutting of the crop by the *ryots*. Further I agree with the sessions judge in thinking that the information which Zumorud gave at the thanna of a premeditated affray was intended to blind the violent acts which Shewlal had in view; but at the same time I cannot look upon the conduct of the *ryots* of Munkosee in the light of persons resisting aggression in self-defence, and therefore as without blame. It is clear that the affray originated in the cutting of the crop, and that persons on both sides were wounded.

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Moreover, the burkundauz Tekun and the two chowkeedars, who accompanied him, depose to the assemblage of about 300 men on the part of Shewlal, and of upwards of 100 villagers in the fields, and to their dispersion on his approach. Whether the *ryots* or Shewlal's party commenced the cutting of the crop cannot, from the want of impartial witnesses, be ascertained; but giving the *ryots* the benefit of that doubt, the fair presumption arising from the facts of the case is that they went armed in a tumultuous body to the field of contest, for the purpose of resisting Shewlal's claims; and their having recourse to these violent means is, in my opinion, highly criminal. I concur therefore with the law officer in dealing with the case as one of a premeditated affray.

"The witnesses on the part of Shewlal have deposed to the identification of the parties engaged in the affray in a very loose and sweeping manner. Before the darogah they spoke only to the presence of Suefoo (No. 12) as the leader of the *ryots* and to the prisoners Boodun (No. 9), Punchum (No. 10) and Sobrun (No. 11), having been wounded by the rioters. These prisoners were arrested by the burkundauz on the spot; and Suefoo has not accounted for his being there in a satisfactory manner. I can admit the evidence of the witnesses as good only against these prisoners.

"The witnesses on the part of the *ryots* have consistently from the commencement deposed to Shewlal (No. 1) heading his party on horse-back, and wounding Boodun with a sword. The other prisoners on his side were named in the statements made to the police, and Zumorud Khan (No. 2), Golam Alee (No. 3), Ledoo Khan (No. 4), Kunhye Koormee (No. 5), and Rughobeer Singh (No. 6), were identified by at least two witnesses on the trial, as having taken part in the affray, and were, with the exception of No. 5, who was wounded and fled, taken on the spot.

"The *alibi* set up by the prisoner No. 1, is rejected by the sessions judge and the law officer, as unworthy of credit. I concur in its rejection; the testimony to it is to all appearance tutored and prepared. The prisoners Nos. 8, 13, 14, 15, 16, 17, 18, 19, 20 and 21, are released for want of proof. The prisoner No. 8, was doubtless the person who instigated the *ryots* to use force, but he was not arrested on the spot, and the witnesses did not implicate him in their statements to the police; had he been present, they would undoubtedly have named him. The other prisoners were taken on the spot, but the burkundauz and his attendants did not arrive till the affray had terminated, and the rioters were dispersing. The prisoners were not taken with arms in their hands, and they might have come from the village after the fight was over. It would be, I think, unsafe to convict the prisoners on this evidence alone, especially as it is

altogether not free from confusion. I convict the prisoners Nos. 1, 2, 3, 4, 5, 6, 9, 10, 11 and 12, of an affray attended with severe wounding, and sentence Shewlal (No. 1), as the ringleader, to five (5) years' imprisonment with labor, and the prisoners Nos. 2, 3, 4, 5, 6 to three (3) years' imprisonment with labor, the labor commutable to a fine of rupees fifty (50). Of the remaining convicted prisoners Nos. 9, 10, 11 and 12, on the part of the *ryots*, whose conduct I view as less culpable than that of the other side, I sentence No. 12 to two (2) years' imprisonment and the rest to eighteen (18) months' imprisonment, commutable to a fine of rupees twenty (20) each."

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Case of
SHEWLAL
SINGH and
others.

PRESENT:

R. H. MYTTON, Esq., *Officiating Judge.*

BURRODANWEE DABEE

versus

PUNCHANUN GUNGOPADHYA (No. 19) AND DABEE-
CHURN GUNGOPADHYA (No. 20).

CRIME CHARGED.—1st count, forcibly entering the house of the prosecutrix on the night of the 10th September 1851, corresponding with the 26th Bhadoon 1258, and stealing therefrom her daughter, a child aged about seven years, by name Munmohonee; 2nd count, forcibly taking away the above-mentioned child with intent to deprive her mother of the possession of the said child, and with a view to dispose of her in marriage without the consent of her mother.

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Case of
PUNCHANUN
GUNGOPA-
DHYA and
others.

CRIME ESTABLISHED.—Child-stealing.

Committing Officer, Mr. F. L. Beaufort, magistrate of Jessore.

Tried before Mr. R. M. Skinner, sessions judge of Jessore, on the 3rd April 1852.

Forcible ab-
duction of a
girl by a rela-
tion to give
her in marri-
age without
the consent of
her guardian.
Sentence re-
duced on ap-
peal to eigh-
teen months'
imprisonment
and fifty
rupees fine,
commutable,
on non-pay-
ment, to labor.

Remarks by the sessions judge.—“The magistrate originally punished Nos. 19 and 20 as for a case of theft. This order I reversed on 3rd January, as the deposition of the guardian (the mother) had not been taken, and a charge of child-stealing, if proved, must be committed to the sessions. Again, in my reply No. 49 of 16th February to his remonstrance of 14th idem, I explained that he had not power to punish for the crime of child-stealing, but that the offenders must be committed to the sessions. A reference was made at Mr. Beaufort's request to the Nizamut Adawlut, who in their letter No. 210, dated 20th idem, directed to the same effect. The case has accordingly been committed to the sessions. The magistrate had made a boy of

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nine years of age, whose deposition had not been taken on oath, prosecutor: I ordered that the guardian should be substituted in lieu of her son. From the deposition of the prosecutrix (the guardian) which is corroborated by the evidence of her son, it appears that on 26th Bhadoon, or 10th September, about 7 P. M., she was putting her children to sleep, when hearing a noise of people outside, she went to fasten the door, which was shut, but the prisoners rushed in, and Punchanun took up in his arms her daughter, Munmohonee, a child of seven years of age, who had jewels on, which have not been restored. The mother seized the child's hand, but was pushed down by the other two prisoners. Punchanun carried the child out; the mother followed crying, but Punchanun went off with some ten *latteuls* (clubmen) when other witnesses came up. These witnesses prove that Punchanun carried off the girl in his arms, accompanied by Dabeechurn and some ten others with clubs.

"Punchanun and Dabeechurn plead that the prosecutrix's husband, Muddun, before his death, agreed that, on consideration of money received from Punchanun, Munmohonee was to be given in matrimony. Punchanun says that he paid rupees 150 to Muddun, who told his wife, and she agreed. Subsequently, in Bhadoon last, he married Govind's niece, and Govind married Munmohonee. Dabeechurn allows that the mother did not give her consent to the asserted arrangement with Muddun. Neither of the prisoners named Govind as a witness for their defence, and their replies do not tally. From the witnesses for the defence it is proved that Muddun died two and a half years ago. There is no proof of the marriage having been effected, or the consent of the mother having been obtained, or that any steps were taken by the prisoners till two years after the death of the father. The jury, in their verdict, pronounce prisoners Nos. 19 and 20 guilty of the second count, but I consider the child-stealing proved. The forcibly carrying away a child of seven years of age out of the lawful custody of the guardian to dispose of her as charged in the second count, is stealing it (*vide* page 1485 No. 10, volume 1, of Nizamut Adawlut Reports, 13th October 1851.) I therefore convict the prisoners Nos. 19 and 20 of the crime of child-stealing, and sentence them each to five (5) years' imprisonment, with labor in irons." •

Remarks by the Nizamut Adawlut.—(Present: Mr. R. H. Mytton).—"It appears that the prisoners are relations of the prosecutrix and live in the same homestead. It is proved that they carried off the girl, and that force was used, but they plead that she was promised in marriage, and money given for her. This is not satisfactorily proved, but the prisoners produced the girl when demanded by the police. The case does not appear to

call for so severe a sentence as that passed. There was nothing furtive in the offence, as there was in that quoted by the sessions judge. I concur in the finding of the assessors on the second count, and reduce the punishment to imprisonment for-eighteen (18) months, from the date of the magistrate's sentence, and a fine of rupees fifty (50) each, commutable, on non-payment within ten days, to labor.

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Case of
PUNCHANUN
GUNGOPADHYA and
others.

PRESENT:

R. H. MYTTON, Esq., *Officiating Judge.*

GOVERNMENT

RAJUN CHUNG.

CRIME CHARGED.—Wilful murder.

Committing Officer, Mr. W B. Buckle, magistrate of Sylhet.

Tried before Mr. F. Skipwith, sessions judge of Sylhet, on the 24th June 1852.

Remarks by the sessions judge.—“From the evidence adduced, it is shown that the prisoner's father died on Wednesday, and that on Friday, the 12th June, the prisoner was very dejected, and refused to speak or eat, and so alarmed his relations by his conduct that they called his neighbours in to see him, but with them he would hold no communication.” At night time he went as usual to sleep in a room with his nephew Chand Chung, the deceased, a boy about nine years of age, of whom he appears to have been fond.

“Towards morning the boy's mother was awakened by a noise, and was endeavouring to get a light, when the prisoner came out of his room, opened the door of the house and fled; and on her going in she discovered her son's body dreadfully mutilated, and a *ddo*, covered with blood, lying near him.

“She called her neighbours and told them what had occurred, and they made search for the prisoner, and discovered him in the jungles, and brought him home towards evening. One witness says he on the way admitted he had killed his nephew by command of God; but a second says he did not speak, but made a sign of acquiescence to the question, and looked up to Heaven; but beyond this nothing was elicited.

“On being questioned by the police, he admitted the perpetration of the crime, and again before the magistrate; but he would only say he had killed the deceased, and then refused to answer any other question whatever.

“He refused to plead at all before this court; and I therefore recorded a plea of ‘not guilty,’ for him, and proceeded to trial.

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Case of
RAJUN
CHUNG.

Murder of a child by its uncle from no apparent motive, prisoner remaining mute on trial. Insanity not so evident as to justify acquittal; therefore sentence passed of imprisonment for life in the Alipore jail.

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Case of
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CHUNG.

"The civil surgeon deposes to there being a deep cut into the skull of the deceased, and three or four deep cuts into the bones of the face and forehead; any one of which was sufficient to cause death; but as the body was in a putrid state he did not make a further examination.

"With regard to the prisoner he states that he firmly believes him to be a maligner, as he answered the questions put to him by him in hospital, and eat his meals as any other person would do. In this opinion I concur; for though the prisoner would not speak, he showed that he knew very well what was being said, for his eyes were turned with an expression of intelligence upon the faces of the witnesses or any speaker in court. One of the assessors sat down near him, and after a little while asked him in a low voice where he came from, and he answered the question; but on asking him whose *ryot* he was, he seemed to recollect himself, and refused to speak again.

"Why the prisoner committed the murder is not apparent. He was not apparently insane when he went to sleep, and his running away after the deed, clearly proves he knew he had committed wrong.

"The assessors find the prisoner guilty of culpable homicide only, as the reason for the crime is not apparent; but from the nature and number of the wounds, and the instrument they were inflicted with (a *dāo* of half a seer weight), there can be no doubt of the intention of the prisoner to kill the deceased; and I therefore dissent from their verdict, and convict the prisoner of wilful murder, and beg to recommend that he be imprisoned for life in transportation beyond sea."

Remarks by the Nizamut Adawlut.—(Present: Mr. R. H. Mytton.)—"This is a distressing case. The victim was the nephew of the prisoner, the son of his sister. There is no apparent motive for murder. On the contrary, the mother of the deceased states that the prisoner, her brother, has cherished the deceased child from the time that it was one and a half year old, that is for eight or nine years; that he had had no quarrel with it, but on the contrary (by way of expressing his extreme love for it) she states that he never would eat without him. Nevertheless the surgeon, who has had the prisoner for some time under his care, considers that he is not insane. His own relatives say that he never was insane before, was not given to the use of intoxicating drugs and was only mute the day before the occurrence. The sessions judge gives it as his opinion that he is not insane, but he recommends a sentence falling short of that which he no doubt would have suggested, if he had not felt that the circumstances of the case raise a doubt that the deed was done by the prisoner when not in the full exercise of his reason.

"The evidence does not amount to such proof of insanity as to justify an acquittal, but it is evident, from the depositions of

the neighbours and relations, that they do not believe that he was perfectly sane. A sentence of death would, under the circumstances, be inappropriate and contrary to precedent in similar cases. The prisoner is convicted of wilful murder and sentenced to imprisonment for life. It is possible that the prisoner's intellect may not be quite sound; he will therefore not be transported, but imprisoned in the Alipore jail, where he will be near the Insane Hospital, in case of the malady showing itself distinctly."

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CASE OF
RAJUN
CHUNG.

PRESENT:

A. J. M. MILLS, Esq., *Officiating Judge.*

RAMSUHAE ROY

versus

RAMBHOHALEE ROY (No. 4) AND CHUKKA ROY
(No. 6).

CRIME CHARGED.—No. 4, culpable homicide of Bhyro Roy, and No. 6, accomplice in the above.

CRIME ESTABLISHED.—Nos. 4 and 6, accomplices in the culpable homicide of Bhyro Roy.

Committing Officer, Mr. R. J. Richardson, officiating magistrate of Sarun.

Tried before Mr. C. Garstin, sessions judge of Sarun, on the 5th April 1852.

Remarks by the sessions judge.—“The crime charged in this case arose out of a dispute which took place between the deceased and Soumber Roy (released), the father of the first prisoner, when both Rambhohalee and Chukka Roy struck him over the head, from the effects of which blows he died the following day. It is certain that the dispute arose between the deceased and Soumber Roy, but there is no satisfactory proof that the latter either struck or desired others to strike him; and for this reason he has, in concurrence with the *futwa*, been acquitted. But the case is different with regard to the other two prisoners, as there is ample evidence that they both struck him, and it is shown that these blows caused his death. Both the prisoners deny their guilt, and declare that they were not present when the quarrel took place. Rambhohalee says he was half a *coss* distant, and Chukka, that he was at his own house, twenty-five *luggees* apart; but both of them entirely fail in proving their absence; and as there is no question of their guilt, they have both, in conformity with the *futwa* of the moulvee, been convicted and sentenced as noted in the preceding column.”

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CASE OF
RAMBHOHA-
LEE ROY and
another.

Conviction
of accomplice-
ship in culpa-
ble homicide
affirmed in ap-
peal.

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Case of
RAMBHOHA-
LEE ROY and
another.

Sentence passed by the lower court.—Nos. 4 and 6, each, three (3) years' imprisonment without irons, and a fine of rupees thirty (30) or labor.

Remarks by the Nizamut Adawlut.—(Present: Mr. A. J. M. Mills.)—"The prisoners have appealed. They rest their appeal on the pleas preferred at the trial, which have not been proved. The evidence to their striking the deceased, first the prisoner Rambhohalee Roy, and then the prisoner Chukka Roy with their clubs, is distinct. Six eye-witnesses depose to the fact, and it appears from the deposition of the surgeon that there were several marks of contusions on the scalp and face of the deceased, and that death ensued from a fracture of the skull caused by a blow on the right side of the crown of the head. I see no ground for interfering with the conviction and sentence."

PRESENT :

A. J. M. MILLS, Esq., *Officiating Judge.*

JUDOONATH MUNDUL

versus

THAKOOR DASS SAWONT

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Case of
THAKOOR
DASS SAWONT.

The prisoner wounded the son of the talookdar to revenge the oppression of the latter upon him and fellow *ryots*.

CRIME CHARGED.—1st count, having wounded with intent to kill the prosecutor with an edged weapon; 2nd count, aiding and abetting as accomplice in the above attempt.

CRIME ESTABLISHED.—Aiding and abetting as an accomplice in the wounding of the prosecutor with an edged weapon with intent to kill.

Committing Officer, Mr. V. H. Schalch, magistrate of Midnapore.

Tried before Mr. W. Luke, sessions judge of Midnapore, on the 30th March 1852.

Remarks by the sessions judge.—"The prosecutor deposes that on Sunday night, the 15th February, the prisoner Thakoor Dass came to his house, and under the promise of teaching him a charm that would place within his power the woman of his choice, enticed him to accompany him to a threshing-ground contiguous to his, prosecutor's, house. At the prisoner Thakoor Dass's desire, he provided himself with a *gurra*, a *roomal*, and some *tale*, to perform a ceremony necessary to accomplish the charm. On reaching the threshing-ground, he found the prisoners Jeetoo Bhooya and Sartuck Patter (not arrested) seated there. Thakoor Dass remarked that the charm was accomplished; that the woman had appeared in the threshing-ground. At this moment his (prosecutor's) hands were suddenly seized by Jeetoo and Sartuck, a cloth was twisted round his face, and with some

sharp-cutting instrument, prisoner Thakoor Dass inflicted a deep wound on his neck under the left ear. He called out for assistance, when the witnesses Srimunt Paramanick and Teetoo Haree came to his assistance, and carried him in a state of insensibility to the cutcherry. The prisoner Thakoor Dass confessed in the Mofussil and before the magistrate that he had enticed the prosecutor under the pretence of teaching him a charm, to the threshing-ground, where Bindabun Baree awaited their arrival, and that, as previously agreed, Bindabun Baree assaulted prosecutor, inflicted a deep wound on him, and then ran away. I attach no credit to the testimony of the two witnesses to the fact (Srimunt Paramanick and Teetoo Haree); it is full of contradictions, and is adduced beyond a doubt to implicate the prisoner Jeetoo Bhooya in the charge preferred against him. The confessions of Thakoor Dass corroborate the prosecutor's evidence in every particular, except as regards the persons present at the assault. The confessions are entitled to more credit than the prosecutor's statement, as at the time the assault was made it was very dark, which, added to the state of terror in which prosecutor must have been, prevented his identifying who the persons were that attacked him. Thakoor Dass's confessions are further corroborated by the cloth found in his house with marks of blood on it. The medical officer deposes to the dangerous character of the wound in the neck, and is of opinion that it was inflicted with some sharp-cutting instrument; and that nothing saved prosecutor's life, but the circumstance of the large arteries about the region of the wound not having been injured. The prisoner, in his defence, in this court, pleads that he was persuaded by the talookdar to make his confessions to implicate other tenants who refused to pay their rents; but his confessions do not corroborate this defence, as Bindabun Baree is the only party implicated in them as being concerned in the assault. There can be no question, I think, the intention was to take prosecutor's life, and that the prisoner Thakoor Dass was an accomplice in the attempt, if not the person who actually inflicted the wound. The assessors pronounce the prisoner guilty of the second count of the charge with strong suspicion of his guilt of the first charge. I concur in this finding; and under all the circumstances of the case, sentence the prisoner Thakoor Dass to ten (10) years' imprisonment, with labor in irons."

Remarks by the Nizamut Adawlut.—(Present: Mr. A. J. M. Mills.)—"The prisoner in support of his appeal urges that the talookdar owed him a grudge, and trumped up this false charge against him, but offers no explanation of his duly-attested confessions before the police and the magistrate. The motive to the wounding of the prosecutor is revealed in the confessions. The prisoner states that the *ryots* had been subjected to heavy

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exactions by the talookdar, and being no match for him in a foudaree warfare, had determined to maim one of his family as the only means of putting a stop to his oppressive proceedings. The wounded person is the son of the talookdar, and being on intimate terms with the prisoner, it was agreed that the prisoner should entice him from his house on the promise of teaching him a particular charm. I see no grounds for distrusting the conviction, and confirm the sentence."

PRESENT:

SIR R. BARLOW, BART., *Judge.*

PHELANEE BEWAH

versus

FUQEERAH NUSHA.

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 Case of
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 NUSHA.

The Nizamut Adawlut acquitted the prisoner who had been convicted by the sessions judge, in concurrence with his law officer, of an attempt at rape.

CRIME CHARGED.—1st count, having, on the 19th December 1851, corresponding with the 5th Poos 1258, committed rape on the person of a girl named Deenoo (the daughter of the prosecutrix), who had not attained the age of puberty, and was not married; and 2nd count, having attempted to commit rape on the person of the said girl named Deenoo (the daughter of prosecutrix), who had not attained the age of puberty, and was not married.

Committing Officer, Mr. C. E. Lance, officiating joint magistrate of Bagrah, Rungpore.

Tried before Mr. T. Wyatt, sessions judge of Rungpore, on the 14th April 1852.

Remarks by the sessions judge.—"Agreeably to the court's letter* No. 728, of the 1st instant, paragraph 3, I have the honor to transmit herewith, to be laid before the Nizamut Adawlut, the proceedings on the trial of Fuqeerah Nusha.

"The prosecutrix states, that the prisoner was a connexion and an adjacent neighbour of hers; that on her proceeding to a

* *Extract paragraph (3) from a letter No. 728, dated 1st June 1852, from the Register of the Nizamut Adawlut to the Sessions Judge of Rungpore.*

"As it has been held that attempts to commit an offence follow the course prescribed for the offences themselves, you should have referred the case of Fuqeerah Nusha (No. 2, of Statement No. 2.) for an attempt to commit rape, to the Nizamut Adawlut, under Clause 3, Section VI. Regulation XVII. of 1817. The Court, by Act XIX. of 1848, quash your conviction and the sentence of five (5) years' imprisonment passed upon the prisoner on the 14th of April last, and direct that you refer the trial in the regular course; expunging the case from Statement No. 6, and entering it in the register of trials referred, which you are requested to submit."

market, she told her infant daughter, Musst. Deenoo, aged about seven or eight years, to take and feed her cow, and see that it did not trespass on any crops; that on her return home she (Deenoo) said to her that she had tethered the cow and was seated by it, Fuqeerah (prisoner) being already there with his cattle, who called her to him; when approaching him he seized and ravished her, her clothes having been stained with blood, which she washed off. The next day prosecutrix went and informed at the zemindar's cutcherry, when she was told to complain at the thanna, where she complained in writing. The police mohurir then came and arrested the prisoner and held an inquiry, and forwarded the result to the joint magistrate. Prosecutrix on being interrogated states that she did not examine the child's pudendum, as to whether it had been lacerated or not, or whether her clothes had been blood-stained, &c.

"The prisoner pleaded 'not guilty.'

"Witness No. 1.—Witness is a neighbour of the prosecutrix and of the prisoner. On a Friday, after about four days of Poos last had elapsed, witness went into the meadow to tether his cattle, when half a *pukur* of the day remaining, witness went to see his field of sugar-cane, and having heard seemingly a child crying on the south side of it, in order to see who was crying, he (witness) went outside of the field to the south and saw a hollow, in which the prisoner was on the person of Deenoo, the infant daughter of the prosecutrix, ravishing her. Deenoo was crying. Witness having seen this, called to Fuqeerah, (prisoner), asking 'what he was doing,' on which he (prisoner), confused, instantly arose, and laying hold of his (witness's) feet began to say, 'I have acted improperly, tell no one of it.' Deenoo then rose from the hollow, stood, and crying began to put on her clothes. Witness then began to abuse Fuqeerah, saying, 'Have you no sense to act so towards a child? I will teach you.' At this time Kalee Nusha coming from the north, in taking his cattle home, arrived at the spot, and having seen Fuqeerah laying hold of his (witness's) feet and Deenoo Chokree crying in the hollow, asked what had occurred. Witness then told Kalee what he had detected; on which Kalee accosted the prisoner, who admitted the fact, and begged that neither he nor witness would tell any one; that after this, Deenoo Chokree went home with her cow, witness and Kalee returning to their respective homes.

"On being interrogated, witness states, Deenoo Chokree walked away as she always did, as if unhurt; and that he put no question to Deenoo, nor did she say anything to witness; that on the following day witness told the village mundul the above circumstances. Witness states he did not ascertain at the time whether there was any blood on the clothes of the prisoner or of Deenoo Chokree.

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"Witness gives it as his opinion that the act had not been accomplished by the prisoner. It was only being attempted.

"Witness No. 2.—Confirms the preceding evidence, as far as it affects him (witness), adding that he did not observe that the clothes of either party, the prisoner or the girl, had been stained with blood.

Confession of the prisoner.—"The prisoner confessed in the Mofussil to a desire of concupiscence having seized both him and Deenoo Chokree, when she lay, of her own accord, down on her back, in the hollow, and that he was engaged in sexual intercourse, when he was surprised by witness No. 1, when he got off her person, and states what witness No. 1 deposed to.

"In the foudjarce prisoner confessed to having had sexual intercourse with Deenoo Chokree at her own solicitation.

"The medical officer deposed to having examined the child Deenoo on the 30th December (eleven days after the alleged crime), when he did not discover any marks of violence on the genital organs, no rupture of the hymen, nor any swelling or inflammation of the parts.

"In his defence the prisoner denied the charges, which he stated had been maliciously originated by witness No. 1, and alleged that his Mofussil confession had been extorted, and that a burkundauz (in escorting him to the sudder) had tutored him to confess to the magistrate.

"Prisoner called no evidence.

"The *fuṭwa*, on violent presumption, convicted the prisoner of the second count, in which I concur, and would recommend him to be sentenced to five (5) years' imprisonment, with labor in irons."

Remarks by the Nizamut Adawlut.—(Present: Sir R. Barlow, Bart.)—"The prisoner, it is alleged, confessed in the Mofussil and before the magistrate. But the confessions materially differ. The offence is said to have been committed on the 19th December, the complaint was lodged at the thanna, two *cos*s distant, on the 25th December; and the child of seven years of age was examined by the medical officer on the 30th December.

"The child's mother and a witness, Summee Nusha, deny before the sessions judge all the details which they had previously sworn to in proof of the actual commission of the crime charged in the first count. Time, place, and the contradictions of the prosecutrix and witnesses, all tend to throw discredit on that charge, which it has been attempted to prove. Indeed no reliance can safely be placed on the evidence, with reference to the delay which took place in bringing forward the complaint at the thanna and to the facts established by the medical officer's deposition. The court would not be justified in upholding the conviction. The prisoner is acquitted."

PRESENT :

A. J. M. MILLS, }
AND } ESQRS., *Officiating Judges.*
R. H. MYTTON, }

GOVERNMENT

versus

AZIM KAREEGUR (No. 1), MONIROODIN SHEIKH
ALIAS MONA KAREEGUR (No. 2) AND DOOGOO
SHEIKH (No. 3).

CRIME CHARGED.—1st count, rape upon the person of Musst. Beeloo; 2nd count, forcibly carrying off from her house and assaulting the said Musst. Beeloo.

Committing officer, Mr. F. Beaufort, officiating joint magistrate of Pubnah, Rajshahye.

Tried before Mr. G. C. Cheap, sessions judge of Rajshahye, on the 14th June 1852.

Remarks by the sessions judge.—“ The crime (rape) of which the prisoners are convicted by the *futwa*, and in which I fully concur, renders the reference unavoidable.

“ The only direct evidence is that of the young girl raped; the rest is presumptive; and as the court or judge who reviews the proceedings must peruse the record, I shall confine myself to an outline of what they will find in the depositions taken down in this court.

“ The girl ravished is married, and perhaps may be fourteen years of age, not more, and was sleeping in the same house with her mother and another sister when the *berrah*, or mat wall, was cut, and the prisoners, after having entered the house, seized hold of the elder daughter, and No. 1 carried her out by the door of the house. On the mother attempting to rescue her daughter, she was driven back by the prisoner No. 3. The girl was then taken to a ditch, and thrown on her back, and after some resistance, No. 1 committed a rape on her person. Nos. 2 and 3 then followed. When she became senseless, No. 1 then, a second time, had connexion with her. In the meantime the mother, having collected some of the neighbours, they went out to search, and found the girl, as stated, in the ditch, when the prisoners ran away. The mother then lifted her up as she was lying stripped below the waist, when witness No. 3 carried her home in a senseless state. After getting some water she recovered, and accused the three prisoners of having raped her. The mother distinctly deposed to the forcible abduction of the girl by the prisoner No. 1, and to the other two prisoners being present at the time aiding and abetting, and the witnesses Nos. 3, 4 and 6,

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Charge of
rape by three
men. Prisoners acquitted because no examination of the girl's person was made, and no evidence as to the injury sustained recorded, and because that which was taken to other points was open to strong suspicion.

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all saw the prisoners leaving the spot, where the girl was found, lying senseless and partly naked.

"The mother stated that, though her daughter had been married seven years, the marriage had not been consummated; and from the blood, and other marks on her clothes, when discovered, there can be no doubt that force must have been used, and that she must have been subject to sexual intercourse.

"All the witnesses give her a good character, and state she was not a likely person to go out at night. Her age alone renders it improbable that she should wantonly submit to the embraces of three men; and three men going together of itself contradicts the supposition of any intrigue; though she stated, the prisoners had before made her offers of pice to consent to their wishes.

"The case to me appears a very aggravated one. The breaking (burglariously) into the house was itself a crime; the forcible abduction of the girl from her paternal roof, another; and the rape on her person by the three prisoners a crime committed by each, and the other two were aiding and abetting all the time.

"Mr. Justice Cresswell, in a charge to a jury for a similar offence, remarked:—'This was a very appalling fact, because a woman in such a case must be perfectly helpless, and no resistance which she could possibly make could save her from the attack of several men combined together.'

"The defence set up by No. 1, relating to a dispute that night with him about a cattle trespass, I think was got up for the *nonce*, or a cross-complaint. The girl could have had nothing to do with the trespass; and her husband was not at home at the time.

"Nos. 2 and 3 set up *alibis*, but as both prisoners were at large on bail, I concur with the law officer in rejecting the evidence, as the witnesses had every opportunity to be tutored.

"As regards the *futwa*, it convicts the prisoners on the first count, and acquits them on the second, 'as nothing charged in it is proved.' On hearing this read, it struck me to involve a contradiction, and, in a manner, neutralizing the conviction on the first count, and on my making the remark to the law officer, he explained that there was no beating, '*mar peet*,' as set forth in the second count, proved.

"This is quite true, and '*mar peet*' is the term used in the Bengalee Calendar, to define the assault arising from the forcible abduction of the girl from her mother's house.

"In the English language and by lawyers 'assault' is a term used for almost every act of violence, even threats, and an attempt to commit a rape is so described.

"I would, therefore, beg leave to suggest, as the court have of late prescribed vernacular terms to denote certain offences and degrees of guilt, that they might safely lay down some term for

assault, as in this case, where there has been no beating '*mar peet*,' as they, I think, will admit, being wholly inapplicable.

"As this is the third case of the kind, *viz.*, rape by several persons combined (in one case there were four men, three of whom abused the woman or had their will of her,) that I have tried at Pubnah, I think, for the sake of example, a severe sentence should be passed. The measure I leave with the court; as under Clause 3, Section VI. Regulation XVII. of 1817, the disposal of the case rests with them.

"Since their conviction the prisoners have been ordered to be detained in jail; and I hardly think the charge warranted their being bailed."

Remarks by the Nizamut Adawlut.—(Present: Messrs. A. J. M. Mills and R. H. Mytton.)—"This case came before Mr. Mytton in the first instance.

"After going through the papers of the case, he found strong reasons for doubting the truth of the evidence, if not of the occurrence of the crime itself; but on the other hand he observed that the evidence of the girl herself is positive, and the versions given by her before the three authorities vary not very much from each other; that no satisfactory cause for her to submit to the opprobrium that must attach to her in giving out that three men had had connexion with her is apparent, if her statement to that effect be rejected as untrue,* and that the credit to be given to her evidence must depend very much upon the manner in which it was given, and her general bearing, and that she has undoubtedly impressed the sessions judge, an officer of great experience, with a full belief in the truth of her tale. The law officer who sat on the trial also gives credit to it. For these reasons he thought it desirable that the papers should be laid before another judge and the case considered in consultation. They were accordingly laid before Mr. Mills. After perusal by him, he and Mr. Mytton record the following opinion:—

"After a very careful examination of the papers, and allowing considerable weight to the strong opinion of the sessions judge in favor of conviction, we find too much reason to suspect the truth of the evidence to justify a conviction of the heinous charge with which the prisoners stand arraigned. *

"The girl, aged about fourteen, declared that she had been lacerated, and produced bloody clothes in proof thereof, but no examination of her person to test the truth of this was made at all. The police officer, who received the charge, should have had this done by females unconnected with either party before he took any step whatever in the matter. Neither the magistrate nor the sessions judge have even questioned the mother of the girl as to the injury sustained. These omissions would, under any circumstances, raise difficulties in the way of conviction.

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"The report of the darogah throws discredit on the whole story. The parties are not in a position in life to render it probable that this report was obtained by improper influence, and it contains some strong points in support of the opinion expressed, such as the following :

"The witnesses to the finding of the girl after the alleged occurrence, are not consistent with regard to the place they point out.

"The houses of Keram Kareegur (not a witness) and others, are close to the locality.

"The door of the house where the girl lived might easily be opened ; there was no necessity to cut the *tatty* to get at her.

"Motyollah Chowkeedar states, that hearing a noise at one *pukur* of the night, he went, and found Kungaly (one of the witnesses for the prosecution) beating Azim, prisoner, and the latter bears marks of maltreatment and had sent to complain at another thanna.

"The darogah's conclusion from this and the evidence taken by him was, that Azim, who was a notorious debauchee, and consequently detested by the villagers, had been caught and beat while on some of his expeditions, and that having sent to complain of the violence, this counter-charge had been trumped up.

"The witnesses have not been consistent in their account of the circumstances within their knowledge at the different stages of inquiry. The girl in the sessions adds, what she entirely omitted before, that after all three had raped her once, Azim repeated the offence upon her. The mother of the girl to the darogah stated, that she did not recognize the persons who took her daughter away, nor those who ran from the ditch. In the magistrate's court, she stated that she recognized them at the latter period, and in the sessions, that she did so at both periods. Three of the five witnesses examined by the magistrate declared, that they could not recognize the three men who ran away from the ditch, nevertheless all state in the sessions court that they did so. Two of them in the magistrate's court in opposition to the others, stated that the girl on coming to herself did not say that the prisoners had raped her.

"One of the prisoners, Moniroodin, aged forty, is, it appears, the uncle of another (Azim, aged thirty,) and they ask with considerable show of reason whether it is likely that an uncle and nephew would commit such an offence in concert.

"It is quite clear that Azim was caught and beat, and the witnesses for the prosecution in this case state that which is quite inconsistent with such a supposition ; it is evident therefore that they have not told the whole truth. It is, in our opinion, very doubtful whether there is any truth at all in what they have deposed to. The prisoners are therefore acquitted."

PRESENT :

A. J. M. MILLS, Esq., *Officiating Judge.*

BECHARAM SHAHA

versus

RAM DOME CHOWKEEDAR (No. 22), GATTEENATH CHATTERJEE (No. 23), MOHANUND CHOTAR (No. 25) AND MADIHUB BAOREE (No. 26, APPELLANT).

CRIME CHARGED.—1st count, Nos. 22, 23, 25 and 26, dacoity attended with wounding, in the house of the prosecutor, on the night of the 1st November 1851, or 16th Kartick 1258 B. S., whence property valued at rupees 11-12-0, was plundered; 2nd count, accomplices in the above-mentioned dacoity; 3rd count, No. 22, accessory before the fact to the above-mentioned dacoity; and 4th count, accessory after the fact to the above-mentioned dacoity.

CRIME ESTABLISHED.—Dacoity.

Committing Officer, Mr. G. A. Pepper, officiating magistrate of Beerbhoom.

Tried before Mr. R. B. Garrett, sessions judge of Beerbhoom, on the 15th April 1852.

Remarks by the sessions judge.—“The prosecutor's house was attacked on the night of the 16th Kartick, or 1st November 1851, by about twenty or twenty-five dacoits; but owing to his vigorous resistance, they were only able to carry off the silver ornaments, valued at rupees 11-12-0, which they found on the child of Bholanath Shaha, brother of the prosecutor, who was sleeping by his father's side.

“The darogah of thanna Kishnagore arrived about midnight on the 2nd November, and on the morning of the 3rd, commenced the investigation, in which he was assisted by the darogah of thanna Nangoolea, who reached the spot on the same day.

“It appears that the prosecutor and some of his witnesses recognized certain of the dacoits, but did not disclose their names until the arrival of the police, lest, as they state, the dacoits, who are inhabitants of a neighbouring village, should hear of it and abscond.

“The prisoners Nos. 22, 23, 25 and 26, confessed before the darogah, and, with the exception of prisoner No. 23, repeated their statements before the magistrate, that they had joined the gang who committed this dacoity.

“No property whatever has been recovered.

“All the prisoners have pleaded ‘not guilty’ in this court, and have disavowed their previous confessions, which they declare were extorted from them by the police. Two, out of the many

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The prisoner's confessions supported by the general circumstances of the case, were deemed satisfactory proofs of his guilt.

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witnesses who have been called on the part of the defence, deposed to having seen the prisoners beaten and ill-treated by the police; but these persons are near relations of the prisoners, and from the manner in which their evidence was given I have no hesitation in pronouncing it untrustworthy.

"I held this trial with the assistance of two assessors, Moul-vee Fyzoollah, the law officer of the court, and Baboo Binode Ram Sen, a zemindar of the highest respectability. They both agreed in convicting prisoners Nos. 22, 23, 25 and 26 of dacoity, and acquitting the remaining four prisoners; and I entirely concur in their finding. I do not question the truth of the story as told by the prisoners in the Mofussil and before the magistrate. I believe that the dacoity was planned and carried out by parties of considerable influence and substance, whose escape from the hands of justice is unsatisfactory and much to be regretted.

"I entirely concur in the finding of the assessors, and accordingly sentence prisoner No. 22, to ten (10) years' imprisonment, and being a chowkeedar to two (2) years' additional imprisonment in lieu of corporal punishment, altogether twelve (12) years. Prisoner No. 23, a prominent character in the robbery, to ten (10) years' imprisonment, and prisoners Nos. 25 and 26 each, to seven (7) years' imprisonment, all with labor in irons.

"I have addressed the superintendent of police Lower Provinces regarding the objectionable practice on the part of the datogahs of examining accused parties in the house of the prosecutor."

Remarks by the Nizamut Adawlut.—(Present: Mr. A. J. M. Mills.)—"The prisoner Madhub Baoree has appealed. His appeal is on the plea that his confession in the Mofussil was extorted from him; one witness, a relative, has deposed to seeing the darogah maltreating him, but his evidence is contradictory and is wholly unworthy of confidence. I have set aside the direct evidence of the eye-witnesses for the reason stated in the trial of Gutteenath Chatterjee, who was released on the 11th ultimo; it was open to suspicion, and I deemed it unsafe to ground a penal sentence on it *alone*. The conviction of this prisoner rests on a Mofussil confession, which he repeated in a very detailed manner before the magistrate, and is supported by the general circumstances of the case; both confessions have been duly attested, and I see no reason whatever to distrust them.

"I confirm the sentence and reject the appeal."

PRESENT:

R. H. MYTTON, Esq., *Officiating Judge.*

TRIAL NO. 3.—ZUMEEENAH MUSSULMANEE

versus

SHEIKH NUJJEEBOOLLAH.

CRIME CHARGED.—Rape of Zumeenah Mussulmanee.

TRIAL NO. 4.—SURROOP CHOWKEEDAR.

versus

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CRIME CHARGED.—Having assaulted the prosecutor, a police chowkeedar, while in the execution of his duty, in endeavouring to apprehend the accused, charged with the rape of Zumeenah Mussulmanee.

Committing Officer, Mr. E. Jenkins, magistrate of Howrah, 24-Pergunnahs.

Tried before Mr. E. Bentall, additional sessions judge of 24-Pergunnahs, on the 30th June and 1st July 1852.

Remarks by the additional sessions judge:—

TRIAL NO. 3.—“The prosecutrix is about thirteen years of age. In June 1851, her husband was put into prison, before she had cohabited with him; his sentence of imprisonment will expire in six months, and in the mean time she continued to live with her mother at Nelo, in the thanna of Sulkeea. On the 1st of June last, the mother went off to Calcutta, and left the prosecutrix at home, who states that she was lying asleep, and some one tied up her face and hands and carried her off to a ditch and raped her; that some accomplices were afraid she would be stifled; and that her face was consequently uncovered, and she called out to the *mali* of the adjoining garden. This man, and two others who were with him, went to the place and saw three men run off, and all recognized the prisoner, who was lying with the prosecutrix in the ditch, but who also ran off. The prosecutrix also recognizes the prisoner. She was naked, and much agitated, and was escorted home by the men who had rescued her. Her mother returned to her house in the evening, and complained the next morning to the darogah against the prisoner. The thanna is one *cos* from her house.

“On the 3rd of June the civil surgeon examined the girl, and he is of opinion, that she had then very lately had sexual connexion with some one for the first time; but he saw no marks on her person which would lead him to suppose that she had offered resistance to the man. He is decidedly of opinion that she had not been in the habit of having criminal connexion with

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Rape of a
girl thirteen
years old.
Sentence se-
ven years' im-
prisonment
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any one, as the prisoner asserts that she had. Several witnesses had heard the crime talked about during the day, and the evidence is very clear. The prisoner is very tall, but he is not stout in proportion to his height. He is, however, much stronger than the generality of Bengalees, and could easily carry the prosecutrix in his arms; and I find him guilty of the crime with which he is charged.

"It is difficult to propose a punishment in cases of rape, for the law considers it too heinous an offence for a sessions judge to punish; yet there is no recorded case of the court in which rape unaccompanied with theft or the death of the woman has been punished with imprisonment for a longer period than seven (7) years. As in this case the woman was carried out of her own house, I would punish the prisoner with at least fourteen (14) years' imprisonment with labor in irons. The prisoner is also found guilty of assaulting the chowkeedar who apprehended him; but I do not consider it necessary on that account to add to the punishment which I have proposed."

TRIAL NO. 4.—"There was a hue and cry raised against Nujjeeboollah, for having recently committed a rape in the village of Neloah, and Surroop, who is the chowkeedar of the village, and very much smaller and weaker man of the two, seized him, but he was rescued and escaped, with the assistance of his friends; and in the riot which took place the chowkeedar had his two front teeth knocked out, and received a blow from the prisoner; but it is not shown that the prisoner knocked out his teeth. I find the prisoner guilty of having assaulted the police chowkeedar, when he had apprehended him, against whom there was a hue and cry of having raped Zumeenah Mus-sulmanee."

Remarks by the Nizamut Adawlut.—(Present: Mr. R. H. Mytton).—"I concur in the conviction of the prisoner, but find no special ground for passing a severer sentence in this than is usual in cases of rape, *viz.*, seven (7) years' imprisonment with labor in irons.

"The sessions judge will pass his own orders in the trial of the prisoner for assault on a chowkeedar in execution of his duty."

PRESENT :

R. H. MYTTON, Esq., *Officiating Judge.*

GOOPEENATH SHIHA

versus

CHOOLEE SHEIKH (No. 1), SHAMROO SHEIKH (No. 2), SHAM CHUMAR (No. 3), PYROOLAL BYRAGEE (No. 4), NASSIR SHEIKH, ALIAS DOOBRAJ SHEIKH (No. 5), DEENOO SHEIKH DAGEE (No. 6), RAJEEB CHOWKEEDAR (No. 7) AND SUTTERGHUN (No. 8).

CRIME CHARGED.—1st count, Nos. 1 to 8, dacoity in the prosecutor's house, from which property to the value of rupees 396-14-3 was plundered ; and 2nd count, Nos. 1, 2, and 4 to 8, privy to the said dacoity before and after the fact.

CRIME ESTABLISHED.—Nos. 1 to 8, dacoity ; and Nos. 1, 2, and 4 to 8, privy to the same both before and after the fact.

Committing Officer, Mr. C. T. Carnac, officiating magistrate of Moorshedabad.

Tried before Mr. D. I. Money, sessions judge of Moorshedabad, on the 12th May 1852.

Remarks by the sessions judge.—“ On the night of the 30th March last, a gang of dacoits attacked the prosecutor's house and plundered property to the value of rupees 396-14-3. The villagers collected and pelted bricks, &c., at them, and they decamped, and Choolee Sheikh and Shamroo Sheikh were apprehended, the former with a sword in his hand, by Loll Sheikh and others, and confessed before the darogah, implicating Sham Chumar, Pyroolal Byragee, Nassir Sheikh, and Deenoo Sheikh, who were accordingly apprehended. On the confession of Deenoo, Rajeeb Chowkeedar and Sutterghun were arrested. The prisoners Pyroolal, Nassir, Rajeeb Chowkeedar and Sutterghun also confessed in the Mofussil.

“ Choolee and Shamroo stated that Sham Chumar received a wound from a brick during the commission of the dacoity, and that there was a scar upon his face when apprehended.

“ Nassir, Deenoo, Rajeeb Chowkeedar and Sutterghun, repeated their confessions before the magistrate, which were proved in this court. The witnesses to the apprehension of Choolee and Shamroo deposed in this court on oath to their having apprehended them when running away after the dacoity ; and the witnesses to their confessions at the thaana proved them in this court. They, however, denied the charge before the magistrate and in this court, and in their defence stated that they had been unjustly apprehended, but could adduce no proof in support of their statement. The prisoner Shamroo Sheikh had been appre-

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Appeal from
sentences for
dacoity on the
ground that
confessions
were extorted,
but no proof of
this allegation
offered ; ap-
peal rejected.

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hended on a previous occasion; and the witnesses named by both could state nothing in their favor.

"Pyroolal Byragee and Sham Chumar denied the charge both before the magistrate and in this court; but from the confession of the former at the thanna, which was proved by the witnesses to have been given voluntarily without any improper inducement, and from the prisoner Sham Chumar having been struck by a brick thrown by one of the villagers and seen with a mark on his face when arrested, as well as from the confessions of other prisoners and evidence to the fact of Pyroolal Byragee coming, one evening before the dacoity, to the prosecutor's house and taking a meal there, and asking several questions regarding the number of servants, &c., I considered both guilty, and Pyroolal to have planned the dacoity and led the gang. The witnesses named by him gave him a bad character; and he was once before apprehended, but released for want of proof, in a case of theft.

"The witnesses named by Nassir and Rajeeb could state nothing in their favor.

"The prisoners Sutterghun and Deenoo had been punished before for theft, and Rajeeb was a chowkeedar in the service of Government. With reference to the prevalence of this crime in this district, and the insecurity in consequence of life and property, and the necessity of making an example, I convicted and sentenced the prisoners as stated in the proper column."

Sentence passed by the lower court.—Nos. 1, 3, 4 and 5, each, ten (10) years' imprisonment with labor and irons in banishment; and Nos. 2, 6, 7 and 8, each, twelve (12) years' imprisonment, with labor and irons in banishment, and each a fine of rupees 48-8-8, as a portion of the compensation awarded to the prosecutor, or one-eighth of the amount plundered, under Act XVI. of 1850.

Remarks by the Nizamut Adawlut.—(Present: Mr. R. H. Mytton.)—"All the prisoners, except Sham Chumar (No 3), appeal, alleging that their confessions have been extorted, but they offer no proof, direct or presumptive, of their assertion. Their appeal is quite groundless.

"The prisoner Sham Chumar asserts that his son died on the day of the dacoity, and that going about unconscious, in consequence of the grief, he injured his cheek against a stick. There is not much proof against this prisoner, but he has given various and unsatisfactory reasons for the scar on his face, and the confessions of the other prisoners, although not amounting to legal proof, serve as corroborative to the presumptive proof against him. The appeals of all the prisoners are therefore rejected."

PRESENT :

A. J. M. MILLS, Esq., *Officiating Judge.*

GOVERNMENT

versus

DEHOO (No. 5, APPELLANT), HEERAMUN (No. 6), HUN-
NUMAN CHOWKEEDAR (No. 7, APPELLANT), PEMIE
•MULLAH (No. 8), PURSHAD SONAR (No. 9, APPEL-
LANT), DOMA (No. 11, APPELLANT), BHEKUR (No. 12,
APPELLANT) AND SUMMOUDH (No. 13, APPELLANT).

CRIME CHARGED.—1st count, Nos. 5 and 6, river dacoity
and plundering property, amounting to Company's rupees 383-
15-0; 2nd count Nos. 5, 6, and 8, accessories before and after
the fact; 3rd count, No. 7, accessory after the fact; 4th count,
No. 8, privity; and 5th count, Nos. 5 to 9 and 11 to 13, having
in their possession plundered property knowing the same to
have been obtained by plunder.

CRIME ESTABLISHED.—Nos. 5 and 6, river dacoity and
plundering property, amounting to Company's rupees 383-15-0;
No. 8 accessory to the river dacoity, and Nos. 7, 9, 11, 12 and
13, having in their possession plundered property knowing it to
have been obtained by plunder.

Committing Officer, Mr. R. J. Richardson, officiating magis-
trate of Sarun.

Tried before Mr. C. Garstin, sessions judge of Sarun, on the
13th May 1852.

Remarks by the sessions judge.—“The following is a brief
statement of the facts of this case:—Nuckched Sonar was going
up from Patna to mouza Rajpore, in charge of a boat laden with
copper utensils and other property, when having, on the 24th
March last, anchored the boat for the night in the Gunduck
river, about midnight it was attacked by a gang of men, of
whom one made a torch with part of the thatch of the boat
itself, whilst the rest *looted* it, and carried off some bags full
of the above-named utensils. Nuckched himself, after the rob-
bery, went back to Patna, to report the thing to his employers,
and in this way some delay took place before it was reported to
the police; but when, after three or four days, information of
the robbery was given, the police at once took up the matter and
in and about the houses of all the prisoners convicted, found
concealed certain portions of the stolen property, consisting of
newly-made *tuslas* and *thalees*, &c. The prisoners Dehoo and
Heeramun also confessed in the Mofussil that they had been
engaged in the affair, whilst Hunnuman said, that he had got a
portion of the stolen articles from some thieves when dividing

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The inade-
quacy of the
sentences,
passed on cer-
tain of the pri-
soners, notic-
ed, and atten-
tion drawn to
certain Circu-
lar Orders.

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their booty; and these confessions they repeated to the magistrate; before whom also Pemie admitted having taken the robbers across the river in a dingee, and getting two *thalees* and two *tuslas* for so doing; and though none of the others confessed, there is ample proof against Hunnuman, Pershad, Doma, Bhekur and Summoudh, of being in possession of portions of the stolen property, knowing it to have been stolen. Sree (No. 10) also gave up one *tusla*, which he said he had found, and as it is possible enough that this statement may be true, he has been acquitted, as also have Bustee, Beharee, Hiabul and Ramnath; for though some of them were named by the prisoners confessing, as having been engaged in the affair, nothing was actually found with them; and the only thing against them is the unsupported statement of Dehoo and the others; and this is insufficient for a conviction. All the prisoners deny their guilt, and those who confessed, their confessions also; though Dehoo and Heeramun in a manner admit that some of the stolen articles were found with them. Doma and Bhekur call four witnesses to their defence; but they say nothing which can at all exculpate them, and under these circumstances they have, with the rest of the prisoners above-mentioned, been convicted, and in concurrence with the verdict of the jury, sentenced as set forth in the preceding column."

Sentence passed by the lower court.—Nos. 5 and 6, each ten (10) years' imprisonment with labor in irons. No. 8, seven (7) years' imprisonment with labor in irons. Nos. 7, 9, 11, 12 and 13, each, three (3) years' imprisonment with labor in irons.

Remarks by the Nizamut Adawlut.—(Present: Mr. A. J. M. Mills).—"The prisoners Nos. 5, 7, 9, 11, 12 and 13, have appealed. The prisoners Nos. 5 and 7 admit in the petition of appeal accessoryship, No. 5 both before and after the fact, and No. 7 after the fact only. Their guilt is conclusively established. Nos. 9 and 11 state that the new *thalees* were found in uninhabited houses belonging to them, and that they cannot therefore be held answerable for their being found there. The evidence to their producing themselves the property to No. 9, admitting that he obtained his portion of it by robbery, and to No. 11 saying that he got the two brass utensils from the prisoner Hunnuman, is strong and distinct.

"No. 12 pleads enmity with the prisoner No. 5. It is satisfactorily established that he delivered to the darogah and pointed out the places where he had concealed the brass utensils, which fell to his share.

"Prisoner No. 13 urged that he was the chowkeedar of the village, and some person had, through enmity, purposely placed in his house the three brass utensils found there, but this plea is inconsistent with his defence, which admitted that he obtained

the articles from the prisoner Bustee, with the knowledge that they had been dishonestly come by. The conviction of the four prisoners, Nos. 9, 11, 12 and 13, is, therefore, thoroughly good, but I am of opinion that it should have been on the first count; they were implicated in the robbery, and as they could not give any satisfactory account of the recent acquisition of the stolen property, the strong presumption arising from this fact is that they obtained it by robbing the prosecutor's boat. I confirm the sentence passed by the sessions judge, as it is not in my power to enhance it, but it is inadequate to the offence.

"The sessions judge's attention is particularly directed to the rules contained in Circular Order, No. 247, of volume I., and No. 276, of volume II. The witnesses to the searching of the houses of prisoners should be closely questioned as to whether each article produced in the court is the same as that found in his presence, and if they should be unable to identify the particular articles, the sessions judge should take the deposition of the police officer, who drew up the despatch prescribed by Section XVI., Clause 10, Regulation XX. of 1817, which despatch should, as directed in the first quoted Circular Order, be entered upon the record of the trial. In this case the witnesses have not been examined with the necessary strictness on the above points, and the sessions judge has omitted to number and describe the property according to the number used in the despatch of the police officer."

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Case of
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others.

PRESENT:

SIR R. BARLOW, BART., Judge.

HOSSAIN BUKSH

versus

CHOOHLYE KHAN.

CRIME CHARGED.—Wilful murder of Shahadut Chokra, deceased, son of the prosecutor.

Committing Officer, Mr. F. Tucker, magistrate of Tirhoot.

Tried before the Hon'ble R. Forbes, sessions judge of Tirhoot, on the 18th June last.

Remarks by the sessions judge.—"The prosecutor and prisoner are both residents very near each other in Mohullah Chandwarah in the town of Mozufferpore, the prosecutor being by profession a tailor, and the prisoner a peada of the foudaree court. The indictment charges the prisoner with the wilful murder of Shahadut, a youth of about fourteen or fifteen years of age, the son of the prosecutor, and the statement of the latter is to the following effect:—About 10 o'clock on the night of Sunday the 16th May last, corresponding with the 13th Jeyt 1259 F. S., he,

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The prisoner was convicted of aggravated culpable homicide.

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(the prosecutor,) Rukun Alee (witness No. 1), and Hussun Alee (witness No. 2), both by profession tailors, also residents of Chandwarah, were sitting engaged in sewing in the prosecutor's shop in Chandwarah, the deceased being employed in the same place in cooking some food; and Furzund Alee (witness No. 3), having arrived soon after, sat down beside the tailors. While thus engaged, they observed the prisoner come from an easterly direction and standing near the prosecutor's shop; he repeatedly called out '*kon hi, baba.*' To this the tailors made no reply; upon which the prisoner, directing his speech to Rukun Alee (witness No. 1), said to him with abusive language 'It is you 'I am calling.' The tailor then said 'what have we to do with 'you that you are abusing us?' to which the prisoner replied, 'do you want to fight with me?' and having said that he went away to his own home, distant about one *cottah* to the north of the prosecutor's house, and almost immediately after returned with a sword in his hand, and standing under a *neem* tree close by the door of his own house, unsheathed the sword, and again began to abuse the tailors. The latter then came out of the prosecutor's shop into the road and began to call out '*dohae!*' '*dohae!*' which brought many persons to the spot, and the deceased Shahadut having gone and informed Koorban Alee Khan, the *malik* of Chandwarah, of what was occurring, had returned from his errand, and was also standing in the road. Soon after Chedee Chowkeedar (witness No. 1 circumstantial evidence) too arrived, and going up to the prisoner said to him 'what are you doing?' Upon this the prisoner, laying hold of the chowkeedar, pushed him into the drain by the road side, and then aimed a blow at him with his sword, which fortunately, however, did not light upon the chowkeedar, who getting out of its reach decamped, and went to report the occurrence at the thanna. After this the deceased Shahadut said to the prisoner tauntingly, 'what are you doing? You are indeed a 'wonderful swordsman,'—(*toomhee tulwar bahadoor.*) This was no sooner said, than the prisoner dealt the deceased one blow with his sword on the forepart of the head, which, splitting the skull, entered the brain. The boy never said another word, but died on the spot about an hour after. The prisoner after this, brandishing the drawn sword, with which he struck a pomegranate tree close to and also the wall of his house, took refuge inside the latter place, leaving the scabbard of the sword on the spot where the occurrence took place, and where it was found. About an hour after, the thanna jemadar having arrived, the prisoner could not be found in his own house, but information having been given to the jemadar, that the prisoner had decamped in a westerly direction, followed by a chowkeedar, who tracked him to an out-house belonging to Moulvee Shere Alec, the opium Serishtedar, where the prisoner's mother-in-law

was in service, the jemadar proceeding there found the prisoner and secured him.

"Without any material contradictions or discrepancies on important points, the six persons entered as eye-witnesses in the calendar, corroborate the prosecutor's statement in regard to all the main facts of the case as deposed to by him; and their evidence fully brings home the charge to the accused. They all, however, deposed (five of them being residents of Chandwarah) that they were not aware of there being any cause of previous enmity or ill-will between the prisoner and the prosecutor and his unfortunate son; and indeed, the prosecutor himself, when questioned on that point, not only denied the existence of any bad feeling, but asserted, on the contrary, that the prisoner was in the habit of often coming to his shop. When, too, the eye-witnesses were questioned as to whether the prisoner appeared to them to be at the time of the fatal catastrophe under the influence of liquor, or whether they knew that he was addicted to drink, some of them answered on the first point that they did not at the time take notice; and on the second, that they did not know; so that on neither point could anything conclusive be gathered from their testimony.

"The witnesses to the Mofussil inquest deposed to the body of the deceased exhibiting a sword wound on the left side of the forehead, six inches long, two inches broad, and two inches deep; and the station medical officer who had examined the body deposed in this court that he found that death occurred 'from extravasation of blood on, and a wound of the brain, inflicted, apparently, by some sharp-cutting instrument, dividing the skull and scalp, and death must have ensued very shortly after the infliction of the blow.'

"Before the magistrate and in this court the prisoner pleaded 'not guilty.' His defence in the *foujdaree* court was, that having arrived at his house in the early part of the night, he observed the prosecutor, Rukun Alee (eye-witness No. 1), Kadir Buksh (eye-witness No. 6), and one Bahadoor Alee, and about forty or fifty persons, sitting in the *gully* behind his (prisoner's) house, drinking *taree*, on which he forbid their doing so, and saying to them, 'this house belongs to a respectable person,' told them to go and drink in their own houses. On this they asked him, 'who are you that are speaking?' to which he (prisoner) said to them 'you are abusing me without fault;' upon which they rushed upon him, and if he had not taken to his heels, he would not have escaped with his life. The prisoner also stated that the prosecutor rents the house he lives in from his (prisoner's) mother-in-law, and the latter having also ordered them to depart from her house, the prosecutor used abusive language to her also.

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"He called witnesses to prove that he had told the prosecutor and his party to desist from drinking, but none of them were questioned on that particular point, neither does the record show whether or not the prisoner was allowed the opportunity of questioning his witnesses.

"In this court the prisoner's defence was that he had gone on the Sunday evening to the foudjaree nazir to return a summons, but he did not see the nazir. Afterwards he (prisoner) went to Kunowlee to drink; from which, after having been drinking, he returned to his house about 8 o'clock in the evening, and on arriving there he found the prosecutor and Rukun Alee (eye-witness No. 1), Bahadoor Alee, Kurmoo (witness to *sooruthal* No. 3), Kadirbuksh (eye-witness No. 6) and their relations drinking *taree* in front of his (the prisoner's) door, on which he said to them 'you know that this is the house of a respectable person, why do you drink here?' On this Bahadoor Alee told him (prisoner) to drink too, which, however, he refused, saying that he had already been drinking. On this Bahadoor Alee gave him (prisoner) abusive language, to which he replied in the same strain, and Rukun Alee ordered his nephew to 'mar' him. Upon this they all and the deceased, who was also in liquor, rushed upon him, some of them having *lattees* and clubs, and Kadir having a sword in his hand. He (prisoner) went inside his own premises and concealed himself near a pomegranate tree, and Kadir struck at the tree, the wall, and him (prisoner), with the sword, when half the sword struck the wall and the other half struck the deceased on the head. He cited six witnesses in this court to prove that he had forbid the prosecutor and the others from drinking; that they had assaulted him (prisoner); and that Kadir had struck at him with his sword which lighted both on the wall and the deceased; adding in his defence that these witnesses were not named by him in the foudjaree court to prevent the prosecutor's tampering with them.

"All these six witnesses (summoned by this court) deposed to having seen the tailors drinking '*taree*'; to having heard the prosecutor and his companions and the prisoner mutually abusing each other; and to having seen several of the tailors pursue the prisoner into his house on the night of the occurrence; two of the witnesses deposing that they heard the prisoner forbidding the prosecutor and his party drinking. Of these witnesses also four of them stated that the prisoner appeared from his talk to be under the influence of drink, and two of them deposed to seeing him drinking at his own door.

"Of the five witnesses cited by the prisoner before the magistrate, two of them deposed in this court to seeing the prisoner on the evening of the day of the occurrence at the nazir's intoxi-

cated ; another, that in the latter part of the same day he saw the prisoner going along the road drunk ; and the remaining two witnesses deposed that about eight or nine o'clock on the same night, the prisoner came in the same state to both their houses which are near each other.

"The *futwa* of the law officer convicts the prisoner, with particular reference to the nature of the weapon used, of the crime of wilful murder, and pronounces him liable to suffer death by *kissas*. Fully concurring with the *futwa*, that the prisoner's guilt is conclusively established by the evidence adduced for the prosecution, I am yet of opinion that the case, lamentable as it is, cannot justly be considered as one of deliberate murder, preconcerted with malice aforethought, or calling for the infliction of the law's extremest penalty. There is nothing in the whole features of the case indicating anything approaching to a premeditated intention on the part of the prisoner to take the life of the deceased. It is, indeed, in evidence that after his first verbal altercation with the tailors, and after, as it were, challenging them to fight, the prisoner went to his house, and almost immediately after returned with his sword ; but it is not reasonable to suppose that he could then have had any intention of destroying the deceased boy in particular, more than the prosecutor or any of his companions, as the father's own statement and the testimony of the eye-witnesses both establish the fact that it was not until after the prisoner came back with the sword that the boy had at all addressed him ; and though the *futwa* is silent on the point, I observe that neither the prosecutor nor his witnesses were able to allege that there existed any previous ground of quarrel or ill-will between the parties. The prosecutor stated, on the contrary, that the prisoner was in the habit of frequently coming to his shop, from which the inference is fair that the two must have been on good terms.

"Pleading in his defence in this court that he was under the influence of liquor on the night of the occurrence, it is true that the prisoner did not so plead before the magistrate ; and though the evidence of the witnesses for the prosecution leaves the question of the prisoner's being drunk or sober on the night in question in doubt, the testimony of the witnesses for the defence goes to show, what indeed seems most probable, that both parties had been drinking, and that abusive and irritating language had been used by both. The prosecutor even admits that the deceased himself had spoken tauntingly to the prisoner, though it is clear that no such provocation was given him as would justify or palliate the outrage of which he has been found guilty. Whether, therefore, the prisoner was at the time of the commission of the crime intoxicated or not, he has clearly rendered himself responsible for the act which has wantonly

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deprived a fellow creature of his life; and accordingly, convicting the prisoner of the crime of wilful murder, I would recommend his being sentenced to imprisonment for life, with labor in irons, in transportation."

Remarks by the Nizamut Adawlut.—(Present: Sir R. Barlow, Bart.)—"The prisoner went to a shop where the prosecutor and eye-witnesses were at work, and began to abuse them for not answering his salutation. They remonstrated, when he went to his own house close at hand and returned with a sword. He again abused them; when the deceased, a lad of about sixteen, made use of the expression recorded in the sessions judge's letter of reference. On this the prisoner cut him down with a sword, and he died shortly after. There is ground for the belief that the prisoner had been drinking with the other *durzees*, but the provocation given was slight, not such as would justify the assault. The offence of which the prisoner is guilty amounts at least to culpable homicide of an aggravated nature. I convict him accordingly and sentence him to imprisonment for life in transportation."

PRESENT:

W. B. JACKSON, Esq., Judge.

GOVERNMENT

*versus*REWA (No. 22), BOOLAKEE SINGH (No. 23) AND
HURKHOO SINGH (No. 24).

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Case of
REWA and
others.

The sentence passed on two of the prisoners convicted of perjury, mitigated on appeal.

CRIME CHARGED.—No. 22, 1st count, fraudulently preferring an unfounded complaint, on the part of Boolakee Singh *versus* Bishoon Kuhar and others, charging them with plunder of property; 2nd count, perjury, in having, on the 21st January 1852, intentionally and deliberately deposed, under a solemn declaration taken instead of an oath, before the law officer vested with special powers of assistant, that 'I know Chutterdharee Singh, prosecutor, who used to reside in one of my houses, but who lately went away after locking up the door of that house to Chuttur (Hajepore fair) for ablution, and still resides at that place; that in his absence Bishoon Kuhar, Bunsee Ugurwala, Sree, and some others, took away the property from his house; that Chutterdharee Singh declared that Boolakee Singh was his son, and the latter was in the habit of residing in that house at intervals;' and in having, on the 29th January 1852, again intentionally and deliberately deposed, under a solemn declaration taken instead of an oath, before the said law officer vested with special powers of an assistant (when questioned in the supplementary deposition), that 'Boolakee Singh, who

‘ now declares his father’s name to be Doonia Singh (pointing towards him), said, that this is Boolakee Singh, and then (pointing towards another, by name Boolakee Singh,) that I do not know him, and the man whom I identified now to be Boolakee Singh, had told me his name to be Boolakee Singh, and from what he told me, I know him to be the son of Chutterdharee Singh; that Chuttur Singh had declared that Hurkhoo Singh, whom I now call Boolakee Singh, was his adopted son, being formerly his nephew, and on the affirmation of Boolakee Singh, as also from what I saw myself, I gave the evidence, and this very Boolakee Singh, who now says his name to be Hurkhoo Singh, had pointed me out to the peon; such statements being contradictory of each other on a point material to the issue of the case; and 3rd count, suborning Nos. 23 and 24 to perjure themselves. No. 23, perjury, in having, on the 14th January 1852, presented a petition on the part of Boolakee Singh, son of Chutterdharee Singh, resident of Sahebgunj, dated 13th January 1852, relating to the plunder of all the property from his house, by Bishoon, Bunsee and other bad characters, and deposed, under a solemn declaration taken instead of an oath, before the law officer vested with special powers of an assistant, as to the identity of the petition; again, in having, on the 23rd January 1852, deposed, under a solemn declaration taken instead of an oath, before the said law officer vested with special powers of an assistant, that ‘ Rewa Kubar told me that he would pay all the expenses of the suit, & I would only present this application in the court with my own hands, which I accordingly did before the moulee, unacquainted with the contents of the petition, and when I heard that Rewa had presented a false petition through me, I remained quiet, taking no further step in the case; that my father is Udheen Singh, and that I know not Chutterdharee Singh;’ such deposition being false, and having been intentionally and deliberately made on a point material to the issue of the case. And No. 24, perjury, in having, on the 21st January 1852, intentionally and deliberately deposed, under a solemn declaration taken instead of an oath, before the law officer vested with special powers of an assistant, that ‘ my name is Boolakee Singh; my father’s name is Chutterdharee Singh, at present residing in Sahebgunge; my deposition is, that on Tuesday, Bishoon Kubar, Nundol, Bunsee Ugurwala, Sree Koormee, Bhooi Sonar and several other persons, after breaking the lock of my house, plundered all my property; there was no person in my house, which is the property of some other person, name I do not recollect, but I lived in it for a year on hire, paying the rent thereof to Bishoon, and rupees 400 worth of property were in it. My name is Boolakee Singh; I am the

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'son of Doonia Singh; that Chutterdharee Singh, whose nephew I was, adopted me as a son; that my house is at Mujheawan, and I live here at Piperpantee, and that Boolakee Singh is my nickname, and every one calls me by the name of Hurkhoo Singh;' and in having, on the 22nd January 1852, again intentionally and deliberately deposed, under a solemn declaration taken instead of an oath, before the law officer vested with special powers of an assistant, that (in the supplementary deposition,) 'I truly and on solemn declaration affirm that I did not prefer any charge; that the day before yesterday, Rewa Kuhar came to me and said that a man by name Boolakee Singh preferred a charge of plunder against Bishoon Kuhar and Nundol at his instigation; he did not at present attend the case and gave it up; he (Rewa Kuhar) wanted to pursue the case further, so solicited me to go to the foudar's court and to depose as he directed; that yesterday, the said Rewa came to me and seduced and instructed me as far as he was able; that I know not what thing he administered in *shurbut*, on taking which my temper changed to his instigation, and I became insensible, in which condition presenting myself in the office, together with Rewa, I gave my deposition, and Rewa on my side gave his evidence; my name is Hurkhoo Singh; I am the son of Doonia Singh; my house is at Khutangee; that at the instigation of Rewa, I had my name written Boolakee Singh, and my father's name Chutterdharee Singh. I have no concern with Chutterdharee Singh;' such statements being contradictory of each other on a point material to the issue of the case.

CRIME ESTABLISHED.—All the charges.

Committing Officer, Mr. F. C. Fowle, magistrate of Behar.

Tried before Mr. T. Sandys, sessions judge of Behar, on the 5th May 1852.

Remarks by the sessions judge.—“During the magistrate's absence in the interior of the district, Moulvee Golan Kadir, the law officer, was in charge of the current duties of the magistrate's court, under the magistrate's orders of the 19th and 20th of November last, when Boolakee (prisoner No. 23), styling himself the son of one Chutterdharee Singh, presented a petition, on 14th January last, complaining of Bishoon Kuhar and others as disreputable characters, having plundered all the property locked up in his father's lodgings in the town of Gyal. His petition was filed in the ordinary manner and the requisite process issued; after which he appears to have taken no further steps as petitioner, and was not again forthcoming until searched for, and his deposition taken on the 23rd following (No. 12), when he acknowledged himself the son of Udheen Singh, and that he had been put up to present the petition by Rewa Kuhar (prisoner No. 22), but having subsequently ascer-

tained it to be false, he had pursued the matter no further, nor would he do so now. The only excuse he offered for such singular conduct was that he was a 'straightforward person,' '*seeda admee.*'

"In the interim Rewa Kuhar, one of the witnesses named in the petition, had answered the summons, and in his deposition of 21st January, (No. 5,) had sworn in support of the petition, and that the petitioner was the son of Chutterdharee. On the same date attended Hurkhoo, (prisoner No. 21,) at first calling himself Boolakee, son of Dognia Singh, and the adopted son of Chutterdharee Singh, who in like manner (No. 4) swore in support of the petition. His false personation appears to have been detected at once; for, on being questioned by Moshurruf Alea (witness No. 3), Bishoon Kuhar's attorney, after some prevarication, he acknowledged he was also known by the name of Hurkhoo Singh, and in his supplementary deposition of the following day, the 22nd idem, repeating the same acknowledgment that his real name was Hurkhoo, son of Doonia Singh, admitting at length that Rewa Kuhar (prisoner No. 22) had put him up to such false personation and perjury in place of the original Boolakee, petitioner, who had abandoned pursuit of the petition, which he, Rewa Kuhar, wanted to carry on. He, Hurkhoo, at first resisted, but at last succumbed after Rewa Kuhar had given him something to drink, which turned him to Rewa Kuhar's purposes. He then declared he was not personally acquainted with the prisoner Boolakee (prisoner No. 23), to which he adhered when confronted with him on the 24th following, when both declared they did not know each other. The evidence of only one other witness, one Bundhoo Singh, was taken, who had attended the return to the summons No. 2. In his deposition (No. 10) of 22nd January, he swore the complaint was altogether false.

"With the exposure thus explained, there being in reality no complaint, no such person as Chutterdharee or his son Boolakee being forthcoming, the complaint fell to the ground, as false in itself, and the law officer forwarded the parties and papers of the case for the magistrate's final orders, under his proceedings of 29th January last, No. 29, who followed up the matter by the present commitment.

"Rewa Kuhar (prisoner No. 22) has always pleaded 'not guilty,' pretended no acquaintanceship with Boolakee (prisoner No. 23) and that Hurkhoo was the real petitioner, whom, as stated by him before the law officer, on 29th January, he had pointed out as the petitioner Boolakee, on his the said Boolakee's telling, and when asked (before magistrate, 17th February, No. 37,) as the complaint itself had no reality how he had sworn in support of it, he replied that he had only sworn to what he

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knew. He called no witnesses before the magistrate, but on committal named witnesses in support of such defence. He set up the same defence before this court, but of his five attending witnesses and all except one fellow-caste Kuhar, not one of them even knew anything in his favor.

“ Boolakee Singh's (prisoner No. 23) defence before the magistrate acknowledged his having presented the petition at Rewa Kuhar's instigation, but that he had merely placed it on the table without having been sworn to the truth of it and had pointed out the witnesses through Rewa Kuhar. He again excused his conduct as being ‘a straightforward person.’ Before this court he pleaded ‘not guilty,’ alleging that it was Bishoon Kuhar who had put him up to present the petition, a reckless assertion, utterly irreconcilable with the circumstances of the case. He has never called any witnesses.

“ Hurkhoo Singh's (prisoner No. 24) defence before the magistrate is tantamount to a confession, throwing the whole blame of the matter on Rewa Kuhar, and that he, Hurkhoo, did not know what he was about. Before this court he first pleaded ‘guilty’ and then, when put on his defence, like Boolakee, transposed Bishoon, the accused, into the instigator, instead of Rewa Kuhar. He called three witnesses, two already on the side of the prosecutor, witnesses Nos. 9 and 10, in support of such defence; but all three knew nothing in his favor, although the two thus indicated favor his pretence of having been beside himself, though anything of the kind, on their own showing even, is altogether improbable.

“ The *futwa* of the law officer, on the facts and evidence of the case and the statements of the other two prisoners, convicts Rewa Kuhar on all the three counts on which he stands arraigned, and Boolakee and Hurkhoo of perjury, both having made different depositions, each contradictory of the other, and declares them liable to discretionary punishment by *tazeer*.

“ The facts and circumstances of the case are well maintained by the record and the depositions of the witnesses Nos. 1 to 8 connected with it. The preliminary inquiries by the law officer are highly creditable to him, and have been so well conducted as to leave the prisoners without the slightest plausible defence. Rewa Kuhar's dogged persistence in the truth of a complaint so utterly false, and propped up by two false personations through the other two prisoners Boolakee and Hurkhoo, on the part of a complainant who has never existed, and under all the circumstances of the case, and his own admissions, for a complaint which it is impossible to attribute to any one but himself, leaves no doubt of his guilt on the first count, and such conviction, under all the circumstances of the case, necessarily carries with it conviction on the two remaining counts.

" Boolakee Singh's (prisoner No. 23) guilt rests on slighter grounds, from his having ceased to take an active part in the case after the presentation of the petition, and not having been forthcoming until the roguery was being unmasked. He had doubtless got alarmed, or Rewa Kuhar would not have been driven to the shift of bringing forward Hurkhoo Singh to replace him, for I cannot, on his own showing, even give him credit for being a ' straightforward person,' but a wandering scamp, the ready tool in Rewa Kuhar's hands in the first instance, as made out by his own statements. He calls himself a resident of the Chuprah district, formerly a sepoy, and now employed as a chance mahajun's messenger. His respectability must be very equivocal when he does not venture to call a single witness. Before the law officer on 23rd January last (No. 12), he swore that he was unacquainted with the contents of the petition he had presented, but according to his own statements it is impossible to give him credit for anything of the kind, and it is opposed to the petition itself, which bears on the face of it the usual record and order of its having been verified on oath, after its contents, as customary, had been read out in open court, as deposed to by the Meer Moonshee Jewnarain (witness No. 2); the record of his having been sworn to the truth of the petition is necessarily informal, consisting of two words only, carelessly written, thus ' after ' being sworn,' as is generally the practice; and were any other in force, it might very materially interfere with the ready disposal of the numerous petitions and petitioners in attendance before the magistrate on such occasions; at the same time that the right is as well known as the practice itself is universal of every petition being read aloud in the petitioner's presence. Regarding this, therefore, as no technical bar to conviction, and that his personation of another as a petitioner up to the issue of summons for the witnesses according to Choobhun peon (witness No. 8) and as admitted by himself, to have been in the highest degree wilful, and taken in furtherance of the end of perjury, no such summons issuing, according to general practice, unless he had first sworn to the truth of his petition in the first instance, I find him guilty of the perjury he stands charged with.

" Hurkhoo Singh's (prisoner No. 24) guilt is of an aggravated character, for he could not have acted as he did without having been forewarned of what had previously taken place through Boolakee Singh, as, indeed, confessed to by him on the second day of his appearance, *viz.* 22nd of January, which makes the deception he attempted to carry out doubly criminal, at the same time that his two contradictory depositions formally given, leave no question as to his perjury, as the details deposed to by him on 21st of January, and his wilfulness at the same time in the following cross-examination of that date can leave no room for

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his plea, even were it admissible, of having been bewitched with drink by Rewa Kuhar. The tenor of his several depositions and statements show him to be an utterly reckless character, which I may as well observe he still continues to trifle with, having, on the 5th instant, presented a petition of appeal in the present trial, again styling himself Boolakee, as certified by me on the back thereof under that date, and the 7th following.

“Concurring, therefore, in the conviction of all three prisoners, and being fully aware that practices less barefaced than theirs, but not less injurious in their result, of turning our courts of justice to the vilest purposes, peculiarly prevail in a place like Gyah, where wealth and idle worthless characters abound, I should ill discharge my duty did I not subject the prisoners to exemplary punishment for such daring crime; and they have been accordingly sentenced as within, with regard to their degrees of guilt respectively as above viewed.”

Sentence passed by the lower court.—No. 22, seven (7) years' imprisonment, and instead of corporal punishment two (2) years more,—altogether nine (9) years' imprisonment, with labor and irons, in banishment. No. 23, five (5) years' imprisonment, with labor in irons, and No. 24, seven (7) years' imprisonment, with labor in irons, in banishment.

Remarks by the Nizamut Adawlut.—(Present: Mr. W. B. Jackson.)—“I see no reason to interfere with the finding of the sessions judge against the prisoners Rewa, Boolakee, and Hurkhoo. The case is a combination of perjury, subornation of perjury and false criminal charge, and the facility with which false charges are got up and sworn to by false witnesses in Behar, renders severe punishment necessary on conviction of such offences. But I think seven (7) years' imprisonment with labor and irons, sufficient against Rewa and Hurkhoo and five (5) years' against Boolakee.”

PRESENT :

A. J. M. MILLS, Esq., *Officiating Judge.*

GOVERNMENT

versus

SATAREE SINGH (No. 1), BHOOMKA SINGH (No. 2)
AND PAULCHUND SINGH (No. 3).

CRIME CHARGED.—1st count, dacoity in the house of Kishen Persad Hajra, at Mooragurrea, thanna Ghurbetta, zillah Midnapore, and plundering therefrom property worth rupees 74-10-0 ; 2nd count, participating in the plundered property knowing the same to have been stolen ; and 3rd count, being dacoits by profession and belonging to a gang of Budduck dacoits from their birth.

CRIME ESTABLISHED.—Dacoity.

Committing Officer, Lieutenant C. H. Keighley, assistant general superintendent for the suppression of thuggee and dacoity, Midnapore.

Tried before Mr. W. Luke, sessions judge of Midnapore, on the 1st May 1852.

Remarks by the sessions judge.—“The following are the particulars elicited on trial :—The assistant superintendent for the suppression of dacoity, having reason to suspect that Budduck dacoits were wandering about this and the neighbouring district, under the plea of selling wild animals, were committing dacoity, deputed his guard to their haunts, accompanied by some Keechuck approvers. In the neighbourhood of Ghurbetta, they met with the prisoner Sataree (No. 1), and subsequently with the prisoners Nos. 2 and 3, whom the approver denounced as Budduck dacoits, who lived by dacoity, but to prevent suspicion carried wild animals about the country for sale. They were accordingly arrested. The prisoner No. 1, Sataree Singh, on his appearing before the magistrate, offered his services to Government, and then admitted that he was a Budduck dacoit, and confessed to his having participated in five separate dacoities and implicated about twenty other persons, including the prisoner Bhoomka Singh (No. 2), and Paulchand Singh Sirdar (No. 3). The two likewise confessed before the assistant superintendent for the suppression of dacoity to their having been concerned with the prisoner No. 1 in several gang robberies, including that referred to in the first count of the indictment. The confessions in respect to this dacoity at the village of Mooragurrea are circumstantially corroborated by witnesses who were in the house when it was attacked and plundered, and who were present when the darogah made his local investigation. The confessions of Sata-

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The prisoners apprehended on the recognition of approvers, as Budduck dacoits, are convicted on their own confessions of having committed a particular dacoity.

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ree Singh were taken before the magistrate on 22nd February 1851, who was in charge of the superintendent's office in the absence of the superintendent. When the latter joined his office, Sataree repeated his former confession, admitting further that he had been concerned in many other dacoities which he had not previously acknowledged. As however these subsequent admissions were elicited by leading questions, I attach no value to them whatever.

"The prisoners plead 'not guilty' in this court, and deny having made any confessions. If the evidence is to be relied on, there can be no moral doubt that they are by profession Bud-duck dacoits, and gain their livelihood by plunder and rapine; but since the evidence on record only corroborates one crime of the many to which they confess, the second count of the charge cannot, I think, be legally maintained. Their guilt of the first charge on which they are arraigned is, in my opinion, fully established, and they are accordingly sentenced as indicated in this statement."

Sentence passed by the lower court.—Each, seven (7) years' imprisonment and two (2) years' more in lieu of stripes,—total nine (9) years imprisonment, with labor in irons, in banishment.

Resolution of the Nizamut Adawlut, No. 812, dated 18th June 1852.—(Present : Mr. A. J. M. Mills.)—"The court, having perused the papers above recorded, direct, before passing orders in the case, that the sessions judge explain more fully the grounds on which he has convicted the prisoners of having committed the specific act of dacoity charged against them. The conviction rests solely on their confessions; and it is necessary that the sessions judge should show how the details given by each of the prisoners correspond and are corroborated by the evidence to the occurrence of the dacoity, and to what test and with what results, the whole narratives of the prisoners have been subjected.

"The prisoners have confessed to many dacoities. One affair has been only verified, and that one, not, as the court is at present informed, in a manner altogether satisfactory. Moreover, the circumstance of the other dacoities not having been confirmed, is, while unaccounted for, calculated to throw suspicion on the truth of the narratives. Some of the robberies are reported not to have taken place and no information regarding others is to be found on the record. The sessions judge will re-submit the native papers herewith returned, with his reply."

In reply to the above Resolution, the following explanation, No. 111, dated 5th July 1852, was submitted by the sessions judge :

"I have the honor to acknowledge the receipt of the Resolution of the Court of Nizamut Adawlut, dated 18th June 1852, No. 812. In reply I beg to state that the conviction of the

prisoners was not based solely on their confessions, but on consideration of all the facts elicited on trial. The prisoners Bhoomka Singh and Sataree Singh were arrested with another person, by name Kalee Singh, who has since made his escape, on the 13th February 1851. On the 19th of that month Kalee Singh confessed before the magistrate, the assistant superintendent being absent at the time, and the prisoners Bhoomka Singh, Sataree Singh and Paulchand, followed his example on 22nd February, 3rd March, and 5th March respectively. These confessions agreed in stating that in the previous months of Poos or Magh 1257, the prisoners, assisted by others, committed a robbery in a village east of Ghurbetta, in the house of a Hindoo. In order to certify these confessions, Kalee Singh was deputed, in custody of a guard, to identify the house they had robbed. He proceeded to Mooragurrea, whose locality tallied with that described in the confessions, and pointed out the house of one Kishen Persad Hajrah.

"The fact of a robbery having occurred in that man's house is corroborated by the record of inquiry held in the first instance by the darogah on the spot, and subsequently by the deputy magistrate of Ghurbetta.

"In the confessions relative to the dacoity at Mooragurrea, there are discrepancies as to the exact amount of property obtained, the number of persons concerned, and other points indicated in the accompanying form. The prosecutor's statement likewise does not tally with the confessions as to the amount of property stolen.

"These discrepancies, the court may be of opinion are sufficient to justify an acquittal, but there seemed to me no grounds for presuming that these confessions were the result of promises or intimidation, or that any improper influence was exercised to extort them; they were made deliberately, and after the plea of 'not guilty' had been recorded before the magistrate; and as the fact of the dacoity at Mooragurrea having taken place was substantiated so clearly, I did not feel justified in rejecting them as *entirely* untrue and unworthy of credit.

"I did not attach much importance to the discrepancy between the confessions and the prosecutor's testimony, as Kishen Persad Hajrah, the proprietor of the house, declined, on the ground of religious scruples, to prosecute; and it was only by the interference of the deputy magistrate that the particulars of the robbery were elicited. It struck me, therefore, as possible, and even probable, that, being an unwilling party to the prosecution, he was quite indifferent whether his servant, who was allowed to represent him as prosecutor, gave a correct version of the robbery or otherwise, and that the latter might have misrepresented the facts. The other cases mentioned in the

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prisoners' narratives are uncorroborated, but may, nevertheless, be true. If otherwise, the only inference is, that they are the creations of some designing persons, who, to serve their own ends, have suborned the prisoners, either by threats or persuasion, falsely to implicate themselves."

Remarks by the Nizamut Adawlut.—(Present: Mr. A. J. M. Mills.)—"I have considered the proceedings of this trial with the explanation furnished in the judge's letter, dated 5th instant.

"The prisoners were leading a vagrant life, ostensibly following the trade of catching and selling birds and wild animals, when they were apprehended, at the instance of some Keechuck approvers, who, though unacquainted with their persons, pronounced them to be professional dacoits from their language and habits. When taken before the magistrate of Midnapore they denied their guilt. Some days afterwards Kalee Singh, who has escaped from custody, volunteered to become an approver. This example was followed by the three prisoners. The magistrate and assistant superintendent of thuggee gave them to understand that they could make no terms whatever with them, and that what they stated would be used against them. Notwithstanding this warning, they made free and voluntary confessions, Sataree Singh before the magistrate, and the other two prisoners before the assistant superintendent, in which they acknowledged themselves to be Budduck dacoits, and related the different dacoities in which they had been engaged during the last ten years, their connexion with the Keechuck tribe, their habits, omens, religious ceremonies and language. One dacoity only was of a recent date, and that only (which forms the subject of this trial) was corroborated.

"The confessions agreed in stating that they plundered the house of a Hindoo on the previous Poos or Magh 1257, to the east of Ghurbetta. Sataree Singh said, the dacoity was committed in the village *Mooragurrea* contiguous to *Shambazar*; Bhoomka Singh said it was committed in a village about three *coos* east of Ghurbetta; and Paulchand in a village to the east of Shambazar. Kalee Singh was sent into the Mofussil to point out the house. He pointed out the house of Kishen Persad Hajrah, a Chassee Gowlah, as the one they had robbed. It is in the village of *Mooragurrea*, which is described to be one and a half *coos* to the east of *Shampore* and one *coos* to the east of *Shambazar*, in the Ghurbetta *thanna*; and on inquiry it was found that this person's house was attacked and plundered by dacoits on the 14th of Magh 1257, and the robbery had been reported to, and inquired into by, the police.

"There are discrepancies in the confessions of the prisoners as regards the amount of property stolen, the number of persons concerned, the person who acted as spy on the occasion, and the

date of the occurrence ; as also between the confessions and the prosecutor's statement relative to the description and value of the articles stolen ; but they are unimportant, and go rather to prove the general truth of the statements than otherwise, as they preclude the idea that the story had been mutually concocted. The circumstance too of the prosecutor deposing to the deputy magistrate of Ghurbetta, before the prisoners were apprehended, that the dacoits conversed in Hindee, is corroborative of the truth of their statements, as they are natives of Hindustan and speak pure Hindee. I attach little weight to the other dacoities, which the prisoners acknowledge to have committed in other districts, not being verified, as they are not described in a manner to admit of easy verification, while it is well known that to avoid the great loss and inconvenience which the necessity of attendance would involve, the sufferers will do all in their power to conceal what they have suffered.

"The prisoners urge that they were induced by Kalee Singh, the fugitive prisoner, to confess, in order to secure better treatment in jail ; but, be that as it may, it would appear that it was only on hearing of the escape of Kalee Singh, they recanted, and sought by this plea their liberation.

"Their confessions are proved to have been made of their own will and accord, with a thorough understanding of the consequences, and the fact of the dacoity having been committed at the locality and about the time indicated by them, and in the house pointed out by Kalee Singh, taken with the other circumstances of the case, affords the strongest presumption in corroboration of their statement in regard to their having committed this specific dacoity. Seeing no reason to distrust the conviction and sentence, I reject the appeal. The explanation of the assistant general superintendent as to the cause of delay in committing the prisoners has been considered satisfactory by the judge in charge of the English department."

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PRESENT :

A. J. M. MILLS, Esq., *Officiating Judge.*

LUKHEEKANT CHATTERJEE

versus

MONIRUDEEN MIRDHA (No. 19, APPELLANT), BODEN MUNDUL (No. 20), RAMCHAND MUNDUL (No. 21), GOLUCK MUNDUL (No. 22), RAMSOONDER MUNDUL (No. 23) AND RAMDHUN DASS (No. 24).

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The prisoner was convicted of dacoity on his own confessions, which were considered by the Nizamut Adawlut to have been satisfactorily proved.

CRIME CHARGED.—1st count, Nos. 19 to 23, having committed a dacoity in the house of the prosecutor, and plundered therefrom property valued at rupees 285-13-0, during the night of the 17th March 1852, corresponding with the 5th Cheyt 1258 B. E. ; and 2nd count, No. 24, having a part of the plundered property in his possession knowing it to have been obtained by robbery by open violence.

CRIME ESTABLISHED.—Nos. 19 to 23, dacoity, and No. 24, knowingly possessing property obtained by dacoity.

Committing Officer, Mr. H. Rose, joint magistrate of Khoolnah, Jessore.

Tried before Mr. R. M. Skinner, sessions judge of Jessore, on the 19th May 1852.

Remarks by the sessions judge —“ On the evening of the 18th March, the chowkeedar (who was very dilatory and has not been sent in) reported at the thanna, which is four *cos*s from the scene of the occurrence, that about the middle of the third watch of the previous night prosecutor's house was attacked by dacoits. The next morning the darogah proceeded to the spot, took the deposition of the prosecutor, an inventory of plundered property, &c. The prosecutor deposes that he had just returned, after having gone out for some purpose, when, observing lights and people outside his house, he called out ; a voice answered him which seemed like that of Moniruddeen (formerly his servant), who was apprehended and confessed on the 20th idem both before the police and the joint magistrate. Witnesses Nos. 1 to 3, neighbours, who ran out hearing prosecutor's cries, recognized prisoner No. 20, who, with two others, seized witness No. 1. Prisoner Nos. 21 and 22 were also seen by witnesses among the departing dacoits. In the confession are named prisoners Nos. 20 to 23, and Govind Biswas, uncle of prisoner No. 24, whose house was searched on the 22nd, and property, Nos. 1 to 5, was found in his house. Prisoner No. 24 claimed it as his own ; but it proved to be prosecutor's.

“ The prisoners deny ; but their witnesses do not prove their *alibi*.

"Considering the crime of dacoity proved against prisoners Nos. 19 to 23, and of knowingly possessing property obtained by dacoity against No. 24, I sentence the five former to seven (7) years', and the last to four (4) years' imprisonment, with labor in irons. I tried the case under Act XXIV. of 1843."

Remarks by the Nizamut Adawlut.—(Present : Mr. A. J. M. Mills.)—"The prisoner Moniruddeen has appealed. The other prisoners were acquitted by me on the 25th of June 1852, (see the Reports for that month,) as the evidence to their identity at the time of committing the dacoity, the main proof against them, was considered unworthy of credence. The prisoner, appellant, states that his confessions were obtained by unfair means. His confessions, made first to the darogah and then repeated to the magistrate, have been satisfactorily proved, and his witnesses, so far from proving his plea, spoke to his bad character; he was a discharged servant of the prosecutor, and the confessions bear such a strong impress of truth as to leave no room for doubting the propriety of the conviction. I confirm the sentence passed by the sessions judge."

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DEEN MIRDHA
and others.

PRESENT :

R. H. MYTTON, Esq., *Officiating Judge.*

GOVERNMENT

versus

OMERTA BEWAIL.

CRIME CHARGED.—Wilful murder of Nubokissore Mundul, who was wounded on the 4th May 1852, corresponding with 23rd Bysack 1259, and died of it on the 16th May 1852, corresponding with 4th Jeyt 1259.

Committing Officer, Mr. C. F. Carnac, officiating magistrate of Moorshedabad.

Tried before Mr. D. I. Money, sessions judge of Moorshedabad, on the 21st June 1852.

Remarks by the sessions judge.—"The prisoner pleaded 'not guilty.'

"The Government was prosecutor in this case; and the facts elicited on the trial convict the prisoner of manslaughter.

"The deceased was the son-in-law of the prisoner, and his wife and son, about seven years old, lived with his mother-in-law.

"On the 4th Jeyt 1259 B. S., or 16th May 1852, the two women and the deceased had a quarrel, in which the deceased from abuse proceeded to blows, and severely beat one of the women, when the other, the prisoner, threw a *hansooah* at him, which penetrated his breast, making a deep wound, and ultimately causing death.

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Deceased violently assaulted his wife, the daughter of the prisoner, who having a *hansooah* in her hand threw it at the deceased and thereby caused his death. Held that this was culpable homicide, and prisoner sentenced to six months' imprisonment and a fine of rupees ten commutable, on non-payment, to labor.

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" Besides the two women there was only one other eye-witness to the quarrel, the son of the deceased, who informed the neighbours that they had wounded his father.

" He was sent for by the sessions court, but had evidently been tutored, and being ignorant of the obligations of an oath was not sworn. He stated that he knew nothing of what had occurred, and only remembered his father being wounded.

" The voluntary confession of the prisoner at the thanna and before the magistrate was borne out by the statement of the deceased before his death.

" The confessions were proved by the attesting witnesses.

" Although at the sessions court she denied the charge, and stated that she had been intimidated and induced to confess, there was no proof of such intimidation; I see no ground to distrust her confession. The deceased appears to have been a quarrelsome man; and on this very occasion committed a violent assault on his wife, striking her three or four blows on the head with a *lattee*, which made her senseless; one of the blows must have been a severe one, the mark was visible during the trial.

" The prisoner in her confession states, that the deceased asked his wife for some clothes belonging to his son. She at first said she had none; but at her (the prisoner's) request she brought him a torn cloth, upon which he flew into a passion, and commenced the assault. Considering the provocation the prisoner received by the assault upon her daughter, that the deceased at the time was armed with a *lattee* and was young and strong, and that she threw the *hansookah* at him, I can come to no other conclusion than that the act was committed under the impulse of the moment, partly from resentment, and partly, perhaps, from fear, but without any intent to murder. The deceased fell under a mango tree, whence he was taken home, and sent to the hospital. Dr. Kean reported that he was going on well, and he left the hospital without his permission or knowledge. The favorable report was dated 7th May 1852. He left the hospital shortly after; the wound became worse, and he died on the 16th May 1852. From Dr. Kean's evidence on oath, it is clear that he was not aware of the extent and severity of the wound until he ascertained it at the *post mortem* examination. He states that the wound was so severe, and in the vicinity of such vital parts, that he did not think, under any treatment, he could have survived.

" As the law officer in his *futwa* convicts the prisoner of wounding with intent to murder, and as I differ from the *futwa*, and consider her guilty only of manslaughter, I submit the case for the opinion of the Court of Nizamut Adawlut, recommending that she be imprisoned for the period of three (3) years with labor

suit to her sex, and pay a fine of rupees twenty (20) in lieu of labor, agreeably to Section III. Regulation II. of 1834."

Remarks by the Nizamut Adawlut.—(Present: Mr. R. H. Mytton).—"The sessions judge has, I think, formed a correct opinion as to the facts in this case, but the depositions of the deceased do not fully bear out the confessions of the prisoner as they are stated to do in the 8th paragraph. To the darogah he stated—'I asked for my son's cloth; my mother-in-law, accompanied by my wife, took a *hansooah* and struck me on the chest with it. This was done respecting my other wife remaining in the house.' To the magistrate he deposed—'I asked for my son's cloth; it was not given; abuse was interchanged. I ran some distance. Prisoner ran after me and threw the *hansooah* at me; it struck me on the chest.'

"In these statements no mention of the immediate provocation is made, and if they were accepted as the true version of the affair, the offence would be wilful murder. But it is not probable and is not supported by the evidence of the only witness who saw any part of the occurrence, that is the wife of the deceased and daughter of the prisoner. Her story is, that prisoner asked for her son's cloth, she said she had not got it, and gave him a torn one, upon which he seized her by her hair, and gave her four blows, which felled her, and made her senseless. She does not know what happened afterwards. The prisoner in her confessions states that first of all violence was used by deceased to herself. In one of them she says, that he threw her down; in both of them, that he pelted her with a clod; she then goes on to say—'I and my daughter came out and abused him. I had a *hansooah* in my hand, my daughter a bamboo. He took it from her, beat her and then ran. We pursued him. He caught me by the hair, and threw me down. We followed him. He beat us both, I therefore threw the *hansooah* at him.'

"This is a little confused. It is doubtful to my mind whether the prisoner was herself assaulted, but that her daughter was so, and that severely, is evident. The prisoner apparently having the *hansooah* in her hand threw it at the deceased: she pursued him she admits, but it could not have been at the time that he was running away that she threw the *hansooah* at him, as he would lead one to suppose, for in that case, it would not have struck him in front, as it did.

"The *futwa* finds the prisoner guilty of wilful murder, but declares *kissas* barred, because deceased lived twelve days after the wound. This *futwa* may be quite correct, according to Mahomedan law, as it makes no allowance for sudden homicide from provocation, when the intent to kill is evident, and the intention is judged of almost entirely from the nature of the weapon, *vide*

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Harington's Analysis, page 251, and note at foot. However by Section LXXV. Regulation IX. of 1795, the intention evidently and fairly inferrible from the nature and circumstances of the case, and not the manner or instrument of perpetration (except as evidence of intent) shall constitute the rule for determining the punishment.

"Adopting the statement of the only witness as to the origin of the quarrel, the prisoner in this case had great provocation: her daughter was beaten and stunned before her face by the prisoner, she threw at him an instrument which happened to be in her hand, and which, although likely to produce injury, was not likely to cause death, when so used. This reasonably can only be considered culpable homicide, and that of a very minor degree of culpability. I convict her in concurrence with the sessions judge of this offence, and sentence her to six (6) months' imprisonment and ten (10) rupees fine, commutable, on non-payment within ten days, to labor suited to her sex. From the papers it appears that the deceased left the hospital without being regularly discharged as cured. The magistrate held an inquiry about the matter, and on the 9th June recorded his opinion that this occurred in consequence of the fault (*karkhana*) of the native doctor, and proposed to write to the surgeon on the subject; nevertheless the surgeon deposed on the 18th June that he was not aware how deceased managed to leave the hospital. From this it may be inferred that the letter was not sent as intended. The subject should not be lost sight of. Native doctors cannot be suffered to discharge persons suffering from wounds of their own authority. It is not usual to do so without a written order from the magistrate, on certificate from the surgeon that it is safe to do so."

PRESENT:

R. H. MYTTON, Esq., *Officiating Judge.*

GOVERNMENT

versus

KULLEEMUDDI MUNDUL.

CRIME CHARGED.—Severely wounding his wife Oojullah Beebee with intent to murder her.

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CRIME ESTABLISHED.—Severely wounding his wife Oojullah Bebee with intent to murder her.

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Committing Officer, Mr. C. S. Belli, officiating magistrate of Jessore.

Case of
KULLEEMUDDI MUNDUL.

Tried before Mr. R. M. Skinner, sessions judge of Jessore, on the 1st July 1852.

Severe
wounding
with intent
to murder his
wife. Sentence of four-
teen years' imprisonment
confirmed.

Remarks by the sessions judge.—“It is fully proved, from the admission of the prisoner in this court and the confession which he acknowledges having made before the magistrate, as well as from evidence of witnesses to the prosecution, that the prisoner followed his wife down to a tank and struck her several blows with a *dão*. The civil surgeon testifies that he looked upon the case as one of great danger; that one wound on the upper and back part of the head was of a very serious nature, dividing the scalp to the extent of about three inches, and chipping up a portion of the bone—the bone, however, was not penetrated; another very serious wound was observable on the left side of the back, which laid open the cavity of the thorax; and other wounds of less importance were observed on the back and shoulder.

“The prisoner asserts that he wished to punish her for misconduct and for dishonouring him, by wounding her, but that he did not intend to kill her.

“He does not attempt to prove this assertion; nor can he justify his following her with such a weapon, striking her repeatedly with it, and inflicting such dangerous wounds.

“The wife declined to prosecute at the sessions, and was therefore made a witness.

“The jury unanimously pronounce him guilty of the charge named in the calendar.

“In this I concur. I therefore sentence Kulleemuddi Mundul to be imprisoned for fourteen (14) years with hard labor in irons, *vide* Nizamut Adawlut Reports, volume II. page 211, Regulation XII. of 1829, and volume 5, Nizamut Adawlut Reports, page 176.”

Remarks by the Nizamut Adawlut.—(Present: Mr. R. H. Mytton.)—“The attack of the prisoner upon his wife was

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violent and brutal in the extreme. He admits the wounding, asserting that he did it to punish her for her infidelity, but he does not plead recent provocation. I see no reason to interfere with the sentence. The crime charged has been wrongly stated as simple wounding; the calendar shows that wounding with intent to murder was charged, and it would have been illegal of the sessions judge to convict of that higher crime, if it had been as the abstract makes it appear."

PRESENT:

J. R. COLVIN, Esq., *Judge.*A. J. M. MILLS, Esq., *Officiating Judge.*

SHAMUD ALEE

versus

RAMZAN ALEE (No. 1), HUSSUN ALEE (No. 2), MUSST.
MUSHROBEE (No. 3) AND MUSST. KOOLIAHEE
(No. 4).

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Case of
RAMZAN ALEE
and others.

CRIME CHARGED.—Wilful murder of Meajan, brother of Shamud Alee, prosecutor.

Committing Officer, Captain S. R. Tickell, magistrate of Akyab.

Tried before Captain A. P. Phayre, commissioner of Arracan, on the 12th May 1852.

Four persons convicted of murder. The principal sentenced capitally and three accomplices to imprisonment for life, two, females, with labor suited to their sex, and the third, a male prisoner, to transportation.

Remarks by the commissioner.—“In this case the murdered man, named Meajan, resided within the district of Akyab, on a grant of land on the Mrosyk stream, close to the border of the Chittagong district, whence he had emigrated a few years ago. The prisoner No. 3, Mushrobee, was his wife at the time the crime charged was perpetrated, and was also a near relation by blood to the deceased. Prisoner No. 4, Kooliahee, is daughter of No. 3, Mushrobee, by a former marriage. The other prisoners are no connexion of theirs.

“It appears from the evidence that in the month of Assin last, the deceased came into the station of Akyab on business, bringing with him the prisoners No. 3, Mushrobee, and No. 4, Kooliahee. He came relative to a case in which it is stated by the prosecutor that one Rhamut Alee, the husband of the prisoner No. 4, Kooliahee, had absconded from the deceased's house with money, and gone into the Chittagong district, accompanied by both the female prisoners. The latter, however, subsequently returned home. The deceased, not being able to have the case satisfactorily settled in Akyab, left in a hired boat with a steersman and boatman, accompanied by the two female prisoners, and

also the other two prisoners. There was with them a child likewise, named Anoo, about six or seven years old, a son of the prisoner No. 3, Mushrobee. Prisoner No. 2, Hussun Alee, who kept a small shop in the town of Akyab, appears to have become acquainted with the deceased during this visit to Akyab, and states he accompanied them on the invitation of deceased to establish a shop in the vicinity of the place where deceased resided. Prisoner No. 1, Ramzan Alee, had come to Akyab from the Chittagong district to seek for work, and states he was introduced to the deceased by No. 2, Hussun Alee, and that the deceased asked him to accompany them, saying he would give him his daughter, prisoner No. 4, Kooliahee, in marriage. Prisoner says he went on that understanding.

"The whole party left Akyab together in a hired boat, and proceeded up the Myoo river. After five days' journey they reached a place in the upper portion of the river where they disembarked, to proceed overland to the residence of deceased. On the way they were benighted, and lodged in a hut situated in a lonely jungle, which appears to have been built by some of the hill-tribes to watch their cultivation from. In this place the murder was perpetrated.

"From the evidence it appears that on the night of the 19th* of December last, two villagers of the village of Loungdoong (which is situated within the same grant where deceased resided), named Oomed Alee (witness No. 5) and Magun Alee (witness No. 6), were returning home after dark from reaping. Passing by the side of their creek near their own house, and just in front of the house of witness No. 15, Bukshaw, or Buxa Alee Fuqeer, the witness No. 5, Oomed Alee, who was a little in advance, saw the prisoner No. 2, Hussun Alee, sitting upon the bank. In a boat close by were the two female prisoners (as afterwards ascertained) with their clothes and head-dresses so adjusted as to appear like men. The prisoner No. 1, Ramzan Alee, was binding bamboos to the side of the boat, which was a small one. The child Anoo was also there. The witness No. 2, Abdoolla, who was a hired man of witness No. 1, Kurum Alee, also got into the boat, but the boat proving leaky, they all came ashore again, and went into the house of the witness No. 15, Bukshaw, which was close by. The witness No. 5, Oomed Alee, followed

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* The Bengalee witnesses state the month of Aghun or Ugran, but that month appears to have terminated on the 13th of December 1851. The Arracanese witnesses state the date to be the night of the 12th or morning of the 13th of the waning of the moon, Natdaw, answering to the night of the 19th or morning of the 20th December 1851; and information was given at the thanna on the evening of the following day as appears from the thanna report.

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up to the house talking with the prisoner No. 2, Hussun Alee. There was a fire in the house, and as the witness approached he saw the prisoner No. 1, Ramzan Alee, and the two female prisoners leave hastily by the back of the house. On asking prisoner No. 2, Hussun Alee, why they thus fled, he replied that they were going to sleep. Witness had some suspicion and mentioned it to another villager, Oomur Alee, who is since dead. Then the witness and Oomur Alee, and witness No. 6, Magun Alee, returned to the house of witness No. 15, Bukshaw. They were also accompanied by one Tazooden. Oomur Alee went up and asked for fire, the others standing a little apart—Bukshaw Alee came to the door with it, and the two females and the child Anoo were seen to hide themselves underneath the house. On witness No. 15, Bukshaw Alee, being asked what was underneath his house, he replied, 'It is a dog.' Witness No. 5, Oomed Alee, then went to the Proojogoung, or proprietor of the grant, who is the witness No. 3, Phatoree, and communicated the suspicious circumstances he and the others had witnessed. The proprietor, with the help of some villagers, surrounded the house of witness No. 15, Bukshaw. The fire within was immediately extinguished, but all the prisoners were found inside. Prisoner No. 4, Musst. Kooliahee, was discovered hid underneath a cotton basket. On being questioned at the moment, prisoner No. 3, Musst. Mustrobee stated that her husband, the deceased Meajan, was in Akyab, and that she had had a quarrel with him and ran off. At that time the hiding-place of prisoner No. 4, Kooliahee, had not been discovered, and her mother said that she had married in Akyab. After the discovery of prisoner No. 4, Kooliahee, all were taken to the house of witness No. 3, Phatoree, Proojogoung, and prosecutor having arrived and asked after his brother, the deceased, the prisoner No. 4, Kooliahee, stated, that prisoners No. 1, Ramzan Alee, and No. 2, Hussun Alee, had killed him. The above evidence is confirmed in every important particular by that of witness No. 6, Magun Alee, who adds that he recognized the two female prisoners while they were in the house before Oomur Alee came, as he saw their features by the light of the fire.

"The next step in this case was consequent on the statement of the prisoner No. 4, Kooliahee, made at the house of the witness No. 3, Phatoree, Proojogoung, that some blood-stained clothes were concealed in a basket behind the house of witness No. 15, Bukshaw. The witness No. 6, Magun Alee, and some other persons were immediately sent, together with the prisoner No. 4, Kooliahee, to the spot, and the clothes produced before the court were found hid in some bushes, a short distance from the house. Several of these were men's clothes, and are recognized as having

belonged to deceased. Three of these were much stained with blood. Six pieces of cloth are portions of women's dress, and all six have stains of blood, one being very much stained. From the evidence produced, it appears that witness No. 15, Bukshaw, is a *fugeer*; that his wife, Miriambee, is the daughter of witness No. 1, Kurum Alee, who is also a *fugeer*. Prisoner No. 3, Mushrobee, is a first cousin, by the mother's side, to witness No. 15, Bukshaw, and the said Miriambee (witness No. 16) was half sister to the deceased, Meajan. Witness No. 1, Kurum Alee, lives in Moungdootap, and had come to the village of Loungdoong to go among the neighbouring hill-tribes and beg for uncleaned cotton. He appears to have fallen in with the prisoner No. 2, Hussun Alee, and brought him to the house of his son-in-law, witness No. 15, Bukshaw. The prisoner ate dinner there, and said he wanted a boat to go to Neela (which is in the district of Chittagong) and further that he was a plank cutter. The other three prisoners came to the house at night, and they also ate dinner there. The boat in which the prisoners had embarked to go to Neela was the boat of witness No. 1, Kurum Alee, and witness No. 2, Abdoolla, his hired man, was to row them there. Abdoolla received rupees 2, from the prisoner No. 2, Hussun Alee, which he gave over to witness No. 1, Kurum Alee.

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"After the clothes above-mentioned had been secured, the prisoners and clothes were all taken to the thanna, where they arrived on the afternoon of the 21st December 1851. On the information given by the prisoner No. 4, Kooliahee, and guided by her, the police went to the spot where the murder occurred, and the body of deceased was found and recognized. There were several marks on the head like those that would result from the blow of a club. The hut in which the party had slept the night of the murder had been burnt, and there was picked up a round bit of wood, nearly a foot long (No. 11), charred from fire, and which was produced in court. Prisoner No. 4, Kooliahee, pointed it out on the ground, as the remains of the club with which deceased had been killed. The piece produced is about four inches and a quarter in circumference, and looked like what it was called, a piece of an oar.

"At the thanna the prisoner No. 1, Ramzan Alee, confessed to the following effect:—That he and the other three prisoners had consulted together, and that while deceased was asleep the two women pressed down the throat with a stick, and he himself with an oar-handle struck him thrice on the head: also that prisoner No. 2, Hussun Alee, struck deceased twice, and then he died; that the two women had prompted him to the act, and that deceased wanted to have connexion with the prisoner No. 4, Kooliahee, which was the cause for anger.

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" Prisoner No. 2, Hussun Alee, confessed at the thanna he had given a stick to prisoner No. 1, Ramzan Alee, who killed the deceased, and that he, prisoner, helped to throw the body into the jungle, and prisoner No. 1, Ramzan Alee, set the hut on fire.

" Prisoner No. 3, Musst. Mushrobee stated at the thanna that the two male prisoners killed deceased, and that the clothes near him became bloody. That she and her daughter, prisoner No. 4, Kooliahee had no hand in it.

" Prisoner No. 4, Musst. Kooliahee stated that prisoner No. 1, Ramzan Alee, killed deceased, and that the two male prisoners took the body and threw it away.

" On the 24th of December 1851, the prisoner No. 1, Ramzan Alee, made a full confession before the magistrate, stating that he killed deceased, at the instigation of deceased's wife, the prisoner No. 3, Mushrobee; that the two female prisoners pressed down deceased's throat with a stick, and that prisoner No. 2, Hussun Alee, also struck him two blows.

" The reply of prisoner No. 2, Hussun Alee, was taken before the magistrate on the 3rd of January 1852, and he denied his guilt. On the 12th idem, he stated that he was awoke up at night by prisoner No. 4, Kooliahee, who told him then that prisoner No. 1, Ramzan Alee, had killed the deceased. He then got up and saw the dead body. Prisoner No. 3, Mushrobee, stated, that both the male prisoners killed deceased, and prisoner No. 4, Kooliahee, stated, that prisoner No. 1, Ramzan Alee, killed him:

" Before this court, prisoner No. 1, Ramzan Alee, admitted his confession at the thanna, but said it had been forced from him by harsh treatment. He admitted also his confession before the magistrate, but stated that he had been told by the police that if he confessed he would be released. The prisoner then entered into a detailed statement of his acquaintance with prisoner No. 2, Hussun Alee, and of his introduction to the deceased, Meajan, whose step-daughter, the prisoner No. 4, Kooliahee, he stated he was to marry. On this understanding he accompanied deceased. He stated that they left the boat and then travelled overland. On the road prisoner No. 3, Mushrobee, picked up a stick, and gave it to the prisoner to walk with. A piece of this is produced in court (No. 11). At night all put up in a shed in the jungle, and deceased and the female prisoners slept inside. About midnight, hearing a noise of beating, prisoner went inside, and saw the two female prisoners holding down deceased with a stick by the throat, and that prisoner No. 3, Mushrobee, had in her hand the club or stick now produced (No. 11). The female prisoners ran away, and then all returned with a light and found that deceased was dead. In the morning

they all threw the body west of the hut. The same night they all went to the house of No. 15, Bukshaw, and were apprehended.

"Prisoner No. 2, Hussun Alee, acknowledged before this court his thanna confession, and stated that prisoner No. 1, Ramzan Alee, had struck or killed deceased, and that in the morning they threw the corpse into the jungle. Prisoner No. 3, Mushrobee, stated, she was awoke at night by a noise, and, starting up, fell over deceased's body, and prisoner No. 1, Ramzan Alee, abused and threw her, together with prisoner No. 4, Kooliahee, and the child, down from the hut. That prisoner No. 1, Ramzan Alee, called prisoner No. 2, Hussun Alee, who also struck the deceased. Prisoner No. 4, Kooliahee, stated before this court that at night in the hut she was awoke by some sound, and deceased cried out, and she, rising up, fell over deceased's body. That prisoner No. 1, Ramzan Alee, threw her and her mother down from the hut, and called for a sword and club. That prisoner No. 2, Hussun Alee, brought a club and she heard sounds of blows, the two male prisoners being inside the hut. In the morning the two male prisoners threw the body of deceased into the jungle, and the four prisoners, with the child Anoo, went on, taking the clothes now produced with them. They went to the house of witness No. 15, Bukshaw. Prisoner states she told witness No. 16, Miriambee, that Meajan had been killed, and advised that the Probjoongoung (witness No. 3) should be called. After a time he came and captured them all.

"From the whole of the evidence I am of opinion that prisoner No. 1, Ramzan Alee, is, guilty of the crime charged against him; and that prisoners No. 2, Hussun Alee, No. 3, Musst. Mushrobee and No. 4, Musst. Kooliahee, are guilty of being accomplices in the same crime. The murder of Meajan appears to have been deliberately planned and carried out; and the spot where it occurred was probably chosen as a lonely unfrequented place, where the deed would remain unknown until the perpetrators were safe from pursuit. The conduct of the witnesses No. 5, Oomed Alee and No. 6, Magun Alee, who are ordinary Bengalee peasants, settlers in this province, is very praiseworthy. It is owing to their intelligence and activity that the prisoners did not escape.

"I did not consider it necessary to tender a pardon to any one of the prisoners with a view to obtaining his or her evidence on the trial. From the whole of the circumstances of the case, I consider that justice will be satisfied with the capital punishment of one of the prisoners, namely, No. 1, Ramzan Alee; and I recommend that sentence of death be passed upon him. The other three prisoners, I would recommend should each be imprisoned for life in transportation beyond seas.

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"I have only to add that the prisoner No. 2, Hussun Alee, has lost his left arm below the elbow. Prisoner No. 4, Musst. Kooliahee, stated her age to be fourteen years; but from her appearance I should judge her to be one or two years older."

Remarks by the Nizamut Adawlut.—(Present: Messrs. J. R. Colvin and A. J. M. Mills.)—"Upon all the facts of this case—the tenor of the confessions—the finding of the blood-stained clothes, some of them recognized as having belonged to the deceased—and then the subsequent finding of the corpse of the deceased, with the charred piece of wood, in the jungle, on the indication of the prisoner No. 4, Kooliahee—and with reference especially to the manner in which all the prisoners acted and associated together after the murder, while Nos. 3 and 4, the female prisoners, endeavoured, by disguising their dress and concealing themselves, to evade the discovery of their being in company with the male prisoners, there can be no reasonable ground to doubt the justice of the opinion of the Commissioner, on which he would convict all the prisoners as having been directly concerned in the crime.

"As to the precise part taken by each, there can be no means of guessing except from the details stated in the confessions, which of course can be evidence only against the parties making them. Upon these, No. 1, Ramzan Alee, is clearly guilty as a principal; No. 2, Hussun Alee, acknowledged on the trial that his thanna confession was accurately recorded, and had been voluntarily given, and in that confession he said that he had aided the prisoner No. 1, when in the commission of the crime, by giving him a stick or club. He did not, however, directly repeat this statement on the trial, but confined his admission to having been an accessory after the fact, by helping to throw the body into the jungle, on the morning after the murder. The confessions of the two female prisoners are in terms to privy only, but their own conduct subsequent to the murder, and the other circumstances, compel, as to them also, a conviction of the higher crime of accompliceship.

"The murder was one of a deliberate and secret character, though there may, very probably, have been provocation from the intercourse, or attempt at intercourse, on the part of the deceased, with his step-daughter, the prisoner No. 4, Kooliahee, (daughter by another husband of his wife No. 3, Musst. Mushrobee,) under some engagement or understanding for his marriage with whom the prisoner No. 1 had come with the party from Akhyab.

"On the whole, we think that the sentences proposed by the commissioner are generally appropriate, and we, therefore, sentence only the prisoner No. 1, Ramzan Alee, capitally, the prisoner No. 2, Hussun Alee, to transportation for life, and the

female prisoners Nos. 3 and 4, to imprisonment for life in the zillah jail of the 24-Pergunnahs, with labor suited to their sex.

"We remark, in reference to the concluding part of para. 16 of the letter of the commissioner, that some suitable reward for their conduct ought to be given to the two parties Oomed Alee and Magun Alee. The commissioner will report whether such reward has been given, and if not, will now give such as he thinks adequate, within such limits as the court is competent to sanction."

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Case of
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PRESENT:

R. H. MYTTON, Esq., *Officiating Judge.*

KASHEENATH KOONDOO

versus

JUMMERUDDI SHEIKH (No. 5), JERABDEE SHEIKH (No. 6) AND TURUFDEE ALIAS TURRIBOOLLAH (No. 7).

CRIME CHARGED.—Dacoity at the house of the prosecutor, and plundering therefrom property valued at rupees 106-5-0, on the night of the 31st January 1852, corresponding with 19th Magh 1258.

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Case of
JUMMERUDDI
SHEIKH and
two others.

CRIME ESTABLISHED.—Dacoity.

Committing Officer, Mr. F. L. Beaufort, magistrate of Jessore. Tried before Mr. R. M. Skinner, sessions judge of Jessore, on the 12th April 1852.

Prisoners
convicted of
dacoity, on
evidence of
eye-witnesses
who stated
that they re-
cognized them
as they came
out with light-
ed *mussals*, re-
leased on ap-
peal, the evi-
dence not be-
ing deemed
credible.

Remarks by the sessions judge.—"It is proved by the evidence for the prosecution that the prosecutor's house was broken into on the night of 31st January 1852, or 19th Magh 1258, by some twelve or fourteen dacoits armed with clubs. Prisoners Nos. 5, 6 and 7 were recognized by the light of torches, No. 7 confessed in the Mofussil.

"Prisoners Nos. 6 and 7 were before imprisoned in default of security for good behaviour.

"I convict all three prisoners of dacoity, and sentence them each to seven (7) years' imprisonment with labor in irons.

"I tried the case under Act XXIV. of 1843."

Remarks by the Nizamut Adawlut.—(Present: Mr. R. H. Mytton).—"The conviction of the three prisoners in this case rests on the evidence of three eye-witnesses, who assert that they, standing in different places, the two first at their own houses, and the last, a female, attracted by the noise, going to the prosecutor's, recognized them by the light of *mussals*, as they came out of the plundered house.

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SHEIKH and
two others.

"They state that the dacoits had their faces tied up and one of them that they were rubbed with lime. It is not usual for dacoits to leave the plundered house with *mussals* burning. Even if they did, it would be difficult to recognize by their light persons disguised as the dacoits were said in this instance to have been. There is nothing corroborative of this proof except the Mofussil confession of Turufidee. Of the witnesses who verify this, one is one of the above-noted eye-witnesses, also a witness to recognition of an article of plundered property found in the house of a prisoner acquitted; the other a man of the same village and surnamed as the prosecutor, although the confession purports to have been taken at the zemindar's cutcherry. The prisoner has in both the lower courts asserted that the confession is not genuine, and that he has had quarrels with one Moneer-uddeen Sirdar, who has instigated the prosecutor, his *ryot*, to get up this charge against him. This confession is not to be relied on and the evidence to recognition is not credible. The prisoners will be released."

PRESENT :

W. B. JACKSON, Esq., Judge.

BIHAREEA, A BOY,

versus

POSUN.

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Case of
POSUN.

The sentence passed by the sessions judge, upon the prisoner convicted of mutilation, confirmed, but considered too lenient.

CRIME CHARGED.—Assault with severe wounding.

CRIME ESTABLISHED.—Assault with severe wounding.

Committing Officer, Mr. R. O. Heywood, officiating magistrate of Bhaugulpore.

Tried before Mr. R. N. Farquharson, sessions judge of Bhaugulpore, on the 27th April 1852.

Remarks by the sessions judge.—"Prisoner pleads 'guilty.' Prosecutor, a boy about twelve years of age, and prisoner, a youth of eighteen or twenty, both servants of one Pershad Loheree, went on the day in question, early in the morning, to their master's grazing-ground, about a *cos* from his house,

"Prisoner seems to have thrown prosecutor down into a drain or ditch and attempted to cut off his penis with a *hussook* or small bill-hook; he nearly cut off about half of it, and wounded him in several places slightly in the struggle. One witness alone came to the spot on hearing prosecutor's cries. Prisoner then ran away. Towards evening of the same day he was apprehended by witnesses Nos. 2, 3 and 4, with marks of blood on his clothes, which excited their suspicions. He at once confessed what he

had done, and pointed out the *hussooah* in a *ruhur* field, where it seems he had hid himself after the fact.

"Prisoner confesses throughout to have committed the deed charged against him, and pleads drunkenness as his only excuse. The examination of witnesses, therefore, to the former confessions is unnecessary.

"The civil assistant surgeon deposes to the glans penis having been cut through, and a lasting injury inflicted on the prosecutor.

"Witnesses to defence, of whom Nos. 12, 13, 14 and 15 only have been examined, and (with the exception of No. 12, prisoner's master, who gives him a good character,) know little or nothing about him.

"Prosecutor assigns no motive for the act; and I can only set it down as a piece of wanton cruelty, mischief, and bullying on the part of the prisoner, who is little more than a boy himself, towards the lesser boy, his companion. I do not think the crime calls for any very heavy punishment. The instrument used being that usually in the hands of persons of prisoner's employ, goes to prove that there was no premeditation in the act; and the injury, though lasting, is not of such a nature as to deprive prosecutor of his virility.

"The jury find a verdict of guilty, in which I concur, and sentence the prisoner as above."

Sentence passed by the lower court.—One (1) year's imprisonment, and a fine of rupees twenty-five (25), or labor.

Remarks by the Nizamut Adawlut.—(Present: Mr. W. B. Jackson).—"This is a wanton and cruel assault and wounding, committed by a man of twenty years of age on a boy of twelve years. Without any provocation whatever, the prisoner deliberately cut nearly through the glans penis of the boy, so as in fact to amputate the penis. The crime is confessed, and drunkenness pleaded, but not established. I see no reason to interfere with the sentence, but that sentence appears to me very inadequate to the offence, which on the scale of punishments awarded by our laws seems to have deserved imprisonment with hard labor (commutable) for at least three (3) years."

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Case of
Posun.

PRESENT :

SIR R. BARLOW, BART.,
and
W. B. JACKSON, Esq., } *Judges.*

KUNCHUN SINGH

versus

LUCHMUN SINGH.

1852.

July 28.

Case of
LUCHMUN
SINGH.

The prisoner, a sepoy in a regiment of native infantry, murdered the deceased, a comrade in the said corps, from motives of enmity.
Sentence, death.

CRIME CHARGED.—Wilful murder of Kullendar Singh, cousin of the prosecutor.

Committing Officer, Captain R. Spencer, officiating cantonment joint magistrate, Dinapore.

Tried before Mr. G. Gough, commissioner, with powers of a sessions judge, Patna, on the 30th June 1852.

Remarks by the commissioner.—“ The following are the particulars of this case :—It appears that on the night of the 6th June of the current year, the deceased Kullendar Singh was sleeping on a *charpoy* with another sepoy, named Ramlal Singh, in front of the door of his hut in the regimental lines of the 26th Light Infantry at Dinapore. The latter deposes—that he was disturbed about 11 o'clock on the night in question, by the noise of a blow, and starting up, he saw Kullendar Singh standing, who told him that he had been struck by Luchmun Singh, and then fell to the ground, at the same time he saw the prisoner Luchmun Singh walking away, with an axe in his hand. He further deposes—that the wound inflicted on Kullendar Singh was on his right arm. This witness, who is a youth, declares that he was so shocked with what he saw that he then fainted, and recollects nothing further.

“ Kunchun Singh (another sepoy), the prosecutor and relative of the deceased, was also sleeping near at hand, and was in like manner disturbed, when he saw the prisoner with an axe in his hand running away from where Kullendar Singh was wounded. He gave the alarm, but was unable to seize the prisoner. Three other witnesses, *viz.*, Dabeedeen, Chundeeden, and Preang Singh, also saw the prisoner running away with the axe in his hand; the latter witness deposing that he was sleeping on his *charpoy*, and was disturbed by the prisoner striking against his legs as he passed, in consequence of which he fell, but continued his flight on getting up.

“ The wounded man was taken to the hospital, and there immediately died, in consequence of the hemorrhage occasioned by the division of an artery in the wounded arm. The prisoner Luchmun Singh was at the time a patient in the hospital, and there apprehended while lying, not on his *charpoy* within the

hospital, but in the verandah, on the floor of which he was lying down, with a *chudder* wrapped about him, which *chudder* was stained with several spots of blood.

"Next morning the axe was found, marked with blood, and recognized as the property of Luchmun Singh.

"It is also proved by the evidence of Rugbeer Mistree, that during the afternoon of the night on which the murder occurred, the prisoner took the axe to him to have a new handle put into it, which was done by the witness.

"In addition to what I have above stated, it is proved that a quarrel occurred some time since between the deceased and the prisoner, who then lived together in one hut, and that the former beat the latter, in consequence of which they subsequently lived apart and ceased to speak to each other, and continued at enmity. It is further established by the evidence of the regimental surgeon, Dr. Bond, that the death of Kullendar Singh was caused by the wound inflicted, and the hemorrhage resulting from it.

"In his defence, the prisoner denies all knowledge of the murder, of which he declares himself innocent, affirming that he was sick in hospital.

"The witnesses called for by the prisoner in no degree exonerate him of the charge. It is merely shown that he was a patient in hospital. It is not however proved, that he was there at the time of the murder; but, on the contrary, it is deposed that egress was not prohibited, and the prisoner had full opportunity of going where he pleased.

"The law officer bars *kissas*, in consequence of there being no eye-witnesses, but declares the prisoner guilty of wilful murder on violent presumption and liable to discretionary punishment.

"In my own mind I have not the slightest doubt of the guilt of the prisoner; and I think it is proved beyond all question that he murdered Kullendar Singh, and was actuated by malice and enmity; and I feel it my painful duty to recommend capital punishment."

Remarks by the Nizamut Adawlut.—(Present: Sir R. Barlow Bart. and Mr. W. B. Jackson.)—SIR R. BARLOW.—"The prisoner, a sepoy in the 26th Regiment Light Infantry, quartered at Dinapore, is charged with the wilful murder of Kullendar Singh, also a sepoy in the same regiment. The deceased was sleeping on his *charpoy* when he was attacked by the prisoner, at about 11 o'clock on the night of the 6th of June last. The prosecutor, Kunchun Singh, heard deceased cry out I am killed; he was at a distance of three huts only, ran and saw the prisoner with a *kooralee* coming from the direction of the hut of the deceased. Witness cried out, 'Luchmun has killed my brother' and is running away; he pursued: several people then came

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up and witness could not distinguish the prisoner among them, Ramlal Singh (witness No. 1) was sleeping by the side of the deceased and heard him cry out 'Luchmun Singh has killed 'me.' Witness recognized the prisoner going away with a *kooralee* in his hand at a distance of three paces: it was a moonlight night. The prisoner was recognized by Preaug Singh before the murder, as he tripped over the witness' legs, who was sleeping on a *charpoy* with Assaud Alee, havildar; the witness cried out and asked the havildar why Luchmun Singh had come there.

"Other witnesses, Dabeedeen and Chundeedeen, recognized the prisoner in the act of running away, armed at the time. Sunkur Singh and Preaug Singh have sworn to the *kooralee* as being the property of the prisoner, they had used it for the purpose of cutting wood, and the first-named found it in the empty lines, with fresh blood on it. Teekaram has sworn that he perceived ten or twelve drops of blood on the *chudder*, which he found on the prisoner's person in the hospital, but he is the only witness who had deposed to this effect. He was ordered by the sergeant major at 11 o'clock to examine the prisoner's clothes: no blood was perceptible on his *chupkun*. It would have been well had this point been more closely looked into.

"A mistree, Rugbeer, has sworn that he put the handle into the *kooralee* for the prisoner the evening before the occurrence of the murder.

"The prisoner pleads 'not guilty;' says he was present at roll-call at 9 P.M. and that he could not have passed the sentry at the hospital. The evidence for the defence fails altogether.

"The plea of absence, which he urges, is disproved by the witnesses cited by the prisoner.

"There can be no doubt of the prisoner's guilt. The deceased named him immediately on being struck—he was recognized by moonlight (the moon was full on the 2nd June), the weapon has been sworn to, enmity has been proved, and the defence has broken down.

"I would sentence the prisoner to death. Let the case be sent on to another judge."

MR. W. B. JACKSON.—"There is strong circumstantial proof against the prisoner Luchmun Singh;—he was recognized by Ramlal immediately after the deceased received the blow which killed him; he saw him then walking away, with an axe in one hand and a club in the other, close to where the deceased was lying when struck; three others saw him running away with an axe in his hand; the deceased told Ramlal that the prisoner had wounded him; immediately after the occurrence an axe was found in the lines, which is proved to be prisoner's, with blood on it; a witness swears he put a new handle to it at the prison-

er's request on the very day, on the night of which the act took place; the prisoner was seized in the hospital, but he was not on his *charpoy*, but in the verandah. I see no reason to doubt the truth of the witness' statement. I therefore convict the prisoner Luchmun Singh of the murder, and concur with Sir R. Barlow in sentencing him to suffer death."

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Case of
Luchmun
Singh.

PRESENT:

W. B. JACKSON, Esq., Judge.

SHEIKH GUNGA

versus

MUNNOO.

CRIME CHARGED.—Burglary, in having broken a lock with a *seend kattee*, and theft of property to the value of rupees 14-5-0.

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CRIME ESTABLISHED.—Burglary, in having broken a lock with a *seend kattee*, and theft of property to the value of rupees 14-5-0.

The evidence
for the prosecution being
considered insufficient for
conviction,
the prisoner
was acquitted.

Committing Officer, Mr. R. O. Heywood, officiating magistrate of Bhaugulpore.

Tried before Mr. R. N. Farquharson, sessions judge of Bhaugulpore, on the 1st April 1852.

Remarks by the sessions judge.—“ Prisoner pleads not guilty.”

“ The prosecutor, a shop-keeper, was sleeping outside his door, when about midnight he was awake by the clanking of his door-chain, and saw a man taking away a *petarah* from his shop. He seized the man, and recognized him as Munnoo, and called out ‘ thief, thief.’ Munnoo had, it seemed, several companions, who were not recognized or seized. They rescued Munnoo from the prosecutor’s hands, and struck down the prosecutor with a *lattee*.

“ Witnesses to the fact, Nos. 1, 2, 3 and 4, heard the prosecutor’s cries and came up in time to see the struggle. Nos. 1, 2 and 3 followed the prisoner to seize him, and No. 3 was struck by a *lattee* in the attempt. Nos. 5 and 6 then joined in the pursuit, and prisoner was apprehended in his own house about one hundred yards from that of prosecutor.

“ The property stolen (a quantity of clothes and a *petarah* full of lacquered ware, part of prosecutor’s stock in trade,) was found next morning scattered about near prosecutor’s house by witnesses Nos. 1, 2 and 3. It is fully identified as the property of prosecutor by witnesses Nos. 1 and 2.

“ The forcible entry into prosecutor’s house by breaking a padlock is fully borne out by the evidence of Nos. 1, 2 and 3,

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and is confirmed by a *seend kattoo* found on the spot with the stolen property.

"Prisoner pleads that witnesses Nos. 1 and 2 are near relations of prosecutor, and are in league with the prosecutor to injure him, the prisoner; that he was sleeping in his own house when disturbed by the parties coming to arrest him; and that the cause of enmity is a dispute about some land. The witnesses he produces to prove this cause of enmity, deny all knowledge of it; while Nos. 3 and 5, the chowkeedars of the *mohalla* where he resides, speak confidently to his being a *budmash*, and having been already twice imprisoned for theft and *budmashee*.

"The jury would acquit, on the grounds of there being no eye-witnesses to the fact of breaking the lock, on several discrepancies in the evidence, and on two of the principal witnesses, Nos. 1 and 2, being relatives of the prosecutor.

"In my opinion the facts against the prisoner are quite clear and conclusive. The eye-witnesses to the padlock lying broken on the ground, and to the struggle between the parties, are quite sufficient for conviction on this point. The several discrepancies are slight and easily accounted for. For instance, prosecutor states that no one was present when he was struggling with the prisoner, while the witnesses depose to having seen the struggle near enough to identify the prisoner. It is easy to imagine that in a struggle of this sort the prosecutor may not have been aware of the proximity of his friends who were running to his assistance. The relationship of two only of the witnesses to the prosecutor does not, in any way, invalidate the evidence, for who so likely at that time of night to be on the spot and afford assistance and testimony as the near relatives of the party attacked."

Sentence passed by the lower court.—Five (5) years' imprisonment, with labor in irons.

Remarks by the Nizamut Adawlut.—(Present: Mr. W. B. Jackson).—"I am not satisfied with the evidence against the prisoner Munnoo; there is much discrepancy. The prosecutor says the prisoner had run away before the witnesses came up; but the witnesses say they saw him struggling with the prisoner and then running away; the recognition under the circumstances in a dark night was scarcely possible; and as regards the apprehension, Jogee says, the prisoner was seized when running away before he reached his house; others, that he was within the house and was there apprehended, when the darogah came. There are other inconsistencies. I acquit the prisoner."

PRESENT:

A. J. M. MILLS, Esq., *Officiating Judge.*

GUYARAM DEY

versus

NUFFER NAIK (No. 5), BUNGSHEE NAIK (No. 6), KASHEENATH NAIK (No. 7), GOUR NAIK (No. 8), KHETOO NAIK (No. 9), HUREE NAIK (No. 10), CHEESTEDHUR NAIK (No. 11), DUSRUTH NAIK (No. 12), GOBIND NAIK (No. 13), TARACHAND NAIK (No. 14), SADHOO NAIK (No. 15) AND PUTEET NAIK (No. 16).

CRIME CHARGED.—1st count, going forth in a gang, being armed with weapons, and attacking the house of the prosecutor, Guyaram Dey, with intent to commit dacoity, and wounding the said Guyaram and the witnesses Kasheenath Dey and Hullothur Naik; 2nd count, belonging to a gang of dacoits.

CRIME ESTABLISHED.—Going forth in a gang armed for the purpose of attempting to rob by violence.

Committing Officer, Baboo Jogesh Chunder Ghose, deputy magistrate, exercising powers of a magistrate, Ghurbetta, Midnapore.

Tried before Mr. W. Luke, sessions judge of Midnapore, on the 26th May 1852.

Remarks by the sessions judge.—“ It appears that prosecutor's house was attacked on the night of the 13th April, by a gang of robbers. They broke into the house; but before they could fully effect their purposes, the inmates (the prosecutor, his relations, and servants,) were aroused, and attacking the thieves, wounds were inflicted on both sides. The robbers then made their escape and were arrested on their way to their homes by the police. These circumstances are fully proved by the evidence. The prisoners before the darogah and deputy magistrate confess to having attacked the prosecutor's house with a view of stealing some grain. In this court they all plead ‘ not guilty,’ and in defence urge that they are victims of the *semanadar's* revenge and collusion, but add their inability to adduce proof of it. There is no reason to doubt the truth of the confessions, which are consistent and probable throughout, and are corroborated by the evidence. Some doubt occurred in my mind at the commencement of the trial whether the charge had been correctly laid, but after a careful consideration of the evidence, I am of opinion that the charge in the indictment is correct, and in conformity with the provisions of Section III. Regulation LIII. of

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and others.

The sessions judge having only convicted of attempting to commit a dacoity, it was pointed out to him that the conviction should have been of dacoity, as the house was broken into by violence.

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1803. The prisoners are proved to have gone forth in a gang armed for the purpose of attempting to rob by open violence. The violence preceded or was simultaneous with the attack on the house, and this, according to the precedents of the Nizamut Adawlut, constitutes robbery by open violence (*vide* case of Musst. Chumpee *versus* Muddun Jana, Nizamut Adawlut Reports, 22nd August 1829, volume III. page 271.) The prisoners Nos. 5 to 12, are accordingly sentenced to seven (7) years' imprisonment, with labor in irons."

Remarks by the Nizamut Adawlut.—(Present : Mr. A. J. M. Mills.)—"The appeal of the prisoners rests on general and unsupported imputations of enmity and conspiracy against the *semanadar*, through whose instrumentality the seizure of ten of the prisoners was, on their way to their houses, effected. The prisoners were prevented from plundering the house by the courageous conduct of the inmates, but they were armed, and broke into the house by open violence, and certainly they ought to have been charged with, and convicted of, dacoity attended with wounding, as has been already pointed out to the sessions judge

"There is no ground for disbelieving the confessions of the prisoners, which are strongly corroborated by the proved facts of the case. The sentence on the prisoners is confirmed."

PRESENT:

W. B. JACKSON, Esq., Judge.

MANICK TELEE

versus

PUNCHA BAOREE, CHOWKEEDAR.

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Case of
PUNCHA BAOREE,
CHOWKEEDAR.Conviction
of dacoity affirmed.
but sentence mitigated.

CRIME CHARGED.—1st count, dacoity in the house of the prosecutor on the night of the 17th April 1852, or 6th Bysakh 1259 B. S., whence property valued at rupees 24-11-3 was plundered; 2nd count, aiding and abetting in the above-mentioned dacoity; 3rd count, knowingly receiving property acquired by committing the above-mentioned dacoity; and 4th count, privy to the above-mentioned dacoity.

CRIME ESTABLISHED.—Dacoity.

Committing Officer, Mr. C. W. Mackillop, officiating magistrate of Beerbhoom.

Tried before Mr. R. B. Garrett, officiating sessions judge of Beerbhoom, on the 26th May 1852.

Remarks by the officiating sessions judge.—"The prosecutor's house was attacked by a gang of twelve or thirteen dacoits

on the night of 6th Bysakh, or 17th April 1852, and property plundered to the value of rupees 24-11-3. On hearing the noise of the dacoits the prosecutor awoke and fled with his family to the house of a neighbour, leaving all his property to the mercy of the robbers. After their departure he returned home, and found a spear in his court-yard, which he recognized at once as belonging to the chowkeedar of the village, Puncha Baoree, the prisoner, who was in consequence suspected of having been concerned in the dacoity, and taken into custody. He confessed before the darogah that he had been consulted some time before by one Chatoo Rag as to whose house in his village should be plundered, and that he afterwards saw the dacoits hiding the property in the jungle, which he pointed out to the police. He also confessed before the magistrate; and though he pleaded 'not guilty' in this court, he acknowledged the truth of the statements he had made both in the Mofussil and the foudaree court.

"There can be no doubt of the prisoner's guilt as a principal in the first degree, and as knowingly receiving property acquired by the dacoity; and as this is an aggravated case, he being the chowkeedar of the village in which the prosecutor's house is situated, I sentence him to imprisonment for the period of fourteen (14) years, with labor in irons."

Remarks by the Nizamut Adawlut.—(Present: Mr. W. B. Jackson).—"The prisoner, Puncha Baoree, Chowkeedar, is rightly convicted of dacoity; but as the robbery was not of an atrocious kind, and was unattended with personal violence, and the property stolen was to a small amount, I think seven (7) years' imprisonment, with labor and irons, sufficient punishment."

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Case of
PUNCHA BAO-
REE, CHOW-
KEEDAR.

PRESENT :

A. J. M. MILLS, Esq., *Officiating Judge.*

GOVERNMENT

versus

BUNDHOO (No. 6), SHERMAHOMED (No. 7), BOODHYE (No. 8), BABOORAM (No. 9), BHUTREE (No. 10), BUCKAOOLLAH (No. 11), GOOLEE (No. 12) AND GUNESHEE, CHOWKEEDAR (No. 13).

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Case of
BUNDHOO and
others.

The prisoners
acquitted
of perjury,
their deposi-
tions not hav-
ing been
proved to be
untrue.

CRIME CHARGED.—Perjury, in that they intentionally and deliberately and falsely, with the intent to injure Buckaoollah, deposed, under a solemn declaration taken instead of an oath, before the magistrate of zillah Purnea, as follows:—No. 6 in his information, and Nos. 7, 8 and 9 in their evidence, deposed, that at night on Friday, in the month of Cheyt, they saw Buckaoollah in the Subdulpore factory, and Dhoulut burnt the factory by order of Buckaoollah. No. 10, stated in his deposition that at midnight, on Friday, he saw Buckaoollah with ten or twelve men passing from the south to the north-east. Nos. 11 and 12, deposed that at midnight, in the month of Cheyt last, at the time the Subdulpore factory was on fire, they saw, from the back of the Hitchanutte river, Buckaoollah on horseback with ten or twelve of his attendants coming from the westward. No. 13 deposed that on Friday, in the month of Cheyt last, at one and a half *puhur* of the night past, he saw, from the east of Kullal Khanah, Buckaoollah on horseback with ten or twelve of his attendants proceeding from the south; such statements and depositions being false on a point material to the issue of the case.

CRIME ESTABLISHED.—Perjury.

Committing Officer, Mr. A. E. Russell, officiating magistrate of Purnea.

Tried before Mr. F. Lowth, sessions judge of Purnea, on the 7th June 1852.

Remarks by the sessions judge.—“The prisoners severally pleaded ‘not guilty.’ The record shows that on the 11th April 1852 or 20th Cheyt 1258 B. S., the prisoner Bundhoo (No. 6) lodged a complaint at the sudder police thanna, against one Buckaoollah, charging him with having, on the night of Friday, the 28th Cheyt, in conjunction with others, caused one Dhoulut to fire the bungalow at Subdulpore factory, and thereby destroy it, together with several articles of furniture therein, the said bungalow being the property of a native lady, by name Bebee Luchmeejee. After the requisite local inquiry, the above-named prisoner as prosecutor and Shermahomed (No. 7), Boodye (No. 8), Ba-

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BUNDHOO and
others.

booram (No. 9), Bhutree (No. 10), Buckaoollah (No. 11), Goollee, (No. 12) and Guneshee, Chowkeedar (No. 13), as witnesses, were forwarded to the officiating magistrate, before whom the charge was repeated by the prisoner No. 6, and supported by the depositions of the other parties, under a solemn declaration taken instead of an oath. On Buckaoollah, the accused, appearing in court, he not only denied the charge, but cited several witnesses to prove that on the night in question he was at home, entertaining a number of his friends and neighbours at a feast, given, as is customary among Mahomedans, some days after the death of his daughter. The *alibi* of the accused being thus clearly and satisfactorily established, the prisoners were committed to this court to stand their trial on the charge of perjury, as noted in the statement. Before this court the prisoners severally pleaded 'not guilty,' and declared their depositions before the *fonjdaree* court to be true and correct statements, and the charge of arson to have been fully established against the accused Buckaoollah. The prisoner No. 6 cited two witnesses, and No. 7 named one, to speak to their being always in attendance at the factory, and that the fire was caused by the orders of the accused Buckaoollah. The evidence of these witnesses in all respects proved the presence and employment of the prisoners as servants in the factory; but by whom or by whose orders the bungalow was fired they were unable to bear testimony, beyond that of prisoner No. 6 having the next morning declared Buckaoollah to be the perpetrator of the crime in their presence. Such evidence, however, I considered insufficient to exculpate the prisoners from the charge preferred against them. The prisoners Nos. 11 and 12 also cited two witnesses to speak to their having left their houses and repaired to the factory on the night in question on hearing the uproar occasioned by the fire. These witnesses deposed to their having seen the prisoners leave their homes and go in the direction of the factory; but what became of them afterwards they were utterly ignorant. On such testimony in support of the plea of not having given false evidence, of course no reliance could be placed. The other prisoners called no witnesses.

"In support of the charge thirteen witnesses were cited, of whom ten were examined by this court; and from their evidence it was clear, beyond a doubt, that the accused Buckaoollah was engaged at home as above noted, from midday of Friday to about the same hour of the following day, the guests being entertained night and day during that period, and as his house was distant from the factory some five or six *coss*, it was impossible for him to have been at Subdulpore at midnight directing Dhoulut to fire the bungalow, and therefore the accusation and information of the prisoner No. 6, and the depositions of the other prisoners given under solemn declaration instead of an oath relative to the charge

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Case of
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others.

of arson preferred against him, were false, and deliberately and intentionally made to injure the said Buckaoollah.

"The jury returned a verdict of acquittal, on the ground that the prisoners had not made two statements opposed to each other, and therefore were not punishable for perjury; and as they had only deposed in support of the charge of arson preferred by Bundhoo, whilst the witnesses examined for this prosecution were cited as witnesses for the defence before the foudaree court, it was impossible to say which party was to be credited and whose evidence should be rejected.

"In this verdict I do not concur." As the fact of the prisoners having given false evidence is clearly established by the depositions of the witnesses examined for the prosecution, it matters not whether they have made two statements opposed to each other, or not, and as parties proved to have deliberately and intentionally given false evidence, for the purpose of injuring an innocent person, are by law guilty of perjury and punishable accordingly, the prisoners must suffer the penalty to which they have rendered themselves liable. Moreover, as the jury, after recording their verdict, and in reply to questions put by me, allow that the absence of Buckaoollah from the scene of the occurrence charged and presence at his own house on the night in question were satisfactorily established, it is clear the information and depositions of the prisoners to the contrary must have been false, and therefore the evidence adduced for this prosecution, was beyond doubt deserving of all credence. I therefore set aside the verdict of the jury, and convicting the prisoners severally of perjury, sentenced them each to three (3) years' imprisonment, with labor and irons."

Remarks by the Nizamut Adawlut.—(Present: Mr. A. J. M. Mills).—"I entirely concur in the verdict of the jury acquitting the prisoners. The evidence to the *alibi* is as much open to suspicion as is that to the charge against Buckaoollah. The prisoners have not given contradictory depositions. They declare what they stated on oath to the darogah and repeated to the magistrate to be true, and under such circumstances it is essential for the conviction of the offence of perjury, that there should be such proof of the falsity of the matter sworn to, as to leave no room for any other rational conclusion than that the prisoners are guilty. I find no such proof in this case. There is one statement against the other, each supported by interested evidence; impartial and confirmatory evidence there is none, and it is therefore wholly uncertain whether the crime charged has been committed or not. I acquit the prisoners and direct their release."

PRESENT:

A. J. M. MILLS, Esq., *Officiating Judge.*

GOVERNMENT

DEHOO (No. 5), HEERAMUN (No. 6, APPELLANT), HUMUN CHOWKEEDAR (No. 7), PEMIE MULLAH (No. 8, APPELLANT), PERSHAD SONAR (No. 9), DOMA (No. 11), BHEKUR (No. 12) AND SUMMOUDH (No. 13).

CRIME CHARGED.—1st count, Nos. 5 and 6, river dacoity and plundering property amounting to Company's rupees 383-15-0; 2nd count, Nos. 5, 6 and 8, accessories before and after the fact; 3rd count, No. 7, accessory to the above after the fact; 4th count, No. 8, privity; and 5th count, Nos. 5 to 9 and 11 to 13, having in their possession plundered property knowing the same to have been obtained by plunder.

CRIME ESTABLISHED.—Nos. 5 and 6, dacoity and plundering property amounting to Company's rupees 383-15-0; No. 8, being an accessory in the river dacoity, and Nos. 7, 9, 11, 12 and 13, having in their possession plundered property knowing it to have been obtained by plunder.

Committing Officer, Mr. R. J. Richardson, officiating magistrate of Sarun.

Tried before Mr. C. Garstin, sessions judge of Sarun, on the 13th May 1852.

Remarks by the sessions judge.—“The following is a brief statement of the facts of this case:—Nuckched Sonar was going up from Patna to mouza Rajpore, in charge of a boat, laden with copper utensils and other property, when having, on the 24th March last, anchored the boat for the night in the Gunduck river, about midnight it was attacked by a gang of men, of whom one made a torch with part of the thatch of the boat itself, whilst the rest *looted* it and carried off some bags full of the above-named utensils. Nuckched himself, after the robbery, went back to Patna, to report the thing to his employers, and in this way some delay took place before it was reported to the police, but when, after three or four days, information of the robbery was given, the police at once took up the matter, and in and about the houses of all the prisoners convicted, found concealed certain portions of the stolen property, consisting of newly-made *tustlas* and *thalees*, &c. The prisoners Dehoo and Heeramun also confessed in the Mofussil, that they had been engaged in the affair, whilst Humuman said that he had got a portion of the stolen articles from some thieves when dividing their booty; and these confessions they repeated to the magis-

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CASE OF
HEERAMUN
and PEMIE
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others.

Conviction
approved on
the strength
of the prison-
ers' confes-
sions and
other circum-
stances.

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trate, before whom also Pemie admitted having taken the robbers across the river in a *dingee*, and getting two *thalees* and two *tuslas* for so doing; and though none of the others confessed, there is ample proof against Hunuman, Pershad, Doma, Bhekur and Summoudh, of being in possession of portions of the stolen property knowing it to have been stolen. Sree (No. 10) also gave up one *tusla*, which he said he had found; and as it is possible enough that this statement may be true, he has been acquitted, as also have Bustee, Behari, Hiabul and Ramnath; for though some of them were named by the prisoners confessing, as having been engaged in the affair, nothing was actually found with them; and the only thing against them is the unsupported statement of Dehoo and the others, and this is insufficient for a conviction. All the prisoners deny their guilt, and those who confessed their confessions also, though Dehoo and Heeramun in a manner admit, that some of the stolen articles were found with them. Doma and Bhekur call four witnesses to their defence, but they say nothing which can at all exculpate them; and under these circumstances they have, with the rest of the prisoners above-mentioned, been convicted; and in concurrence with the verdict of the jury, sentenced as set forth in the preceding column."

Sentence passed by the lower court.—Nos. 5 and 6, each, ten (10) years' imprisonment, with labor in irons. No. 8, seven (7) years' imprisonment, with labor and irons, and Nos. 7, 9, 11, 12 and 13, each, three (3) years' imprisonment, with labor and irons.

Remarks by the Nizamut Adawlut.—(Present: Mr. A. J. M. Mills.)—"The prisoners Heeramun and Pemie Mullah have appealed. The appeal of the other prisoners in this case was disposed of by me on the 20th instant.

"The prisoner Heeramun alleges that the property which was found buried in his house, was fraudulently placed there by the prosecutor. That imputation is groundless. The prisoner's confessions to the darogah and the magistrate have been properly attested, and it is in evidence that he produced the property. Pemie Mullah admits that he crossed the dacoits over the river, but denies privity to the dacoity. He confessed to the magistrate accessoryship before as well as after the fact; his confession has been duly verified, and the evidence to his giving up four brass vessels, which he got for crossing the dacoits, is clear and distinct. I see no reason to interfere with the conviction and sentence."

PRESENT :

R. H. MYTTON, Esq., *Officiating Judge.*

GOVERNMENT

versus

TEETOO MOOLLAH.

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CRIME CHARGED.—Perjury, in having, on the 20th October 1851, or 12th Kartick 1258, intentionally and deliberately deposed, under a solemn declaration taken instead of an oath, before the magistrate of Jessore, on the trial of Panchanun Gungopadhya, Debee Churn Gungopadhya and Burrodakant Gungopadhya, for stealing the daughter of Burrodamohee Debea;—that he, the prisoner, saw Panchanun Gungopadhya, Debee Churn Gungopadhya, Bissonath Gungopadhya and Adoo Gungopadhya, with about six or eight men, armed with *lattees* and *surkees*, coming out of the house of Burrodamohee Debea and going towards the east; and in having, on the 2nd April 1852, or 21st Cheyt 1258, intentionally and deliberately deposed, under a solemn declaration taken instead of an oath, before the sessions judge of Jessore, that Panchanun Gungopadhya forcibly carried away the said girl from her mother, and went off towards the east, and that no one but Debee Churn, his (Panchanun's) brother, was with him—such statements being contrary to each other on a point material to the issue of the case.

CRIME ESTABLISHED.—Perjury.

Committing Officer, Mr. F. L. Beaufort, magistrate of Jessore.

Tried before Mr. R. M. Skimmer, sessions judge of Jessore, on the 12th April 1852.

Remarks by the sessions judge.—“Perjury, the crime charged, is clearly proved from the evidence for the prosecution.

“The prisoner in a solemn declaration, taken instead of an oath, before the magistrate, accused two persons who were not named in his deposition before the sessions judge. The two statements are contradictory of each other on a point material to the issue of the case. The jury gave a verdict of ‘guilty,’ in which I concur. I sentence the prisoner to three (3) years’ imprisonment with labor in irons.”

Remarks by the Nizamut Adawlut.—(Present : Mr. R. H. Mytton).—“The prisoner appeals, urging that the discrepancy in his evidence in the two counts arose from failure of memory. In his first evidence to the magistrate he deposed that he saw four men, whom he named, with six or eight others, take off the girl; in that to the sessions court he deposed that the party consisted altogether of only two men. This discrepancy cannot be attributed to failure of memory. The appeal is rejected.”

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Case of
TEETOO
MOOLLAH.

A witness convicted of perjury for having, on a trial in the magistrate's court, asserted that he saw ten men, four of whom he named, commit a crime, and in the sessions court, that there were but two concerned. Held, on appeal, that failure of memory cannot be allowed to be a sufficient excuse for such discrepancy.

PRESENT :

W. B. JACKSON, Esq., *Judge*.

GOONEE JHA AND 2 OTHERS

versus

BINDABUN SURMA (No. 1), DEWAN SINGH (No. 2, APPELLANT), SHEIKH MULHOO (No. 3), SHIBLALL (No. 4), GHEENOO SAHOO (No. 5), HUNUMAN SINGH ALIAS HURBAN SINGH (No. 6, APPELLANT), UJOODHEEA TEWARY (No. 7), WOOMANATH DOSS (No. 8, APPELLANT), PIRTAM GOWALA (No. 9), JEETOO MUNDER (No. 10), BUSSUNT SAHOO (No. 11, APPELLANT), PERSHAD SAHOO (No. 12, APPELLANT), DOMUN SAHOO (No. 13), PERSHAD DOSS GEREE (No. 14), RUNGOO MUNDER (15), BHYRO MUNDER (No. 16), PUHALWAN SINGH (No. 17, APPELLANT), ZALIM SINGH (No. 18, APPELLANT), CHUMMUN SINGH (No. 19, APPELLANT), GIRDHAREE ROY (No. 20, APPELLANT) AND MONJEE DOSS (No. 21, APPELLANT).

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Case of
BINDABUN
SURMA and
others.

The prisoners were convicted of riot and wounding accompanied with resistance of process.

CRIME CHARGED.—Riot with severe wounding.

CRIME ESTABLISHED.—Riot with severe wounding.

Committing Officer, Mr. R. O. Heywood, officiating magistrate of Bhaugulpore.

Tried before Mr. R. N. Farquharson, sessions judge of Bhaugulpore, on the 7th April 1852.

Remarks by the sessions judge.—“ All the prisoners, with the exception of No. 7, plead ‘not guilty,’ No. 7 acknowledges having been in the fray, and having struck Hurk Dutt Jha, prosecutor No. 3, with a *tulwar*.

“ The case, as elicited from the evidence taken before me, is shortly this:—On the 11th of Aghun about 3 o’clock in the afternoon Goonee Jha, prosecutor No. 1, accompanied two peadas, witnesses Nos. 16 and 17, who were employed to serve a notice from a moonsiff’s court on Shiblall Dyar, (prisoner No. 4) to point out to them Shiblall’s dwelling, the notice being issued in a case where Kumla Dutt, a nephew of Goonee Jha’s, was plaintiff. On the peadas’ confronting Shiblall, he denied that that was his name, calling himself Hurdyal or Ramdyal; he then raised an outcry, which immediately brought to the spot a large body of men, armed with swords, shields and *lattees*. Prosecutors Nos. 2 and 3, and witness No. 1 had followed close upon Goonee Jha’s steps, being warned thereto by his nephew, Kumla Dutt, fearing some harm ‘might befall his uncle.’ The twenty-one prisoners, from Nos. 1 to 21 inclusive, are all clearly

identified as having formed part of the armed crowd above-mentioned, and having taken active part in the wounding of the three prosecutors with swords and *lattees*. The lives of all three prosecutors were endangered by the wounds so inflicted, as sworn to before me by the civil surgeon.—(Vide his deposition on the number and nature of the wounds in the record.) The wounds of all the three prosecutors were most severe. Goonee Jha has lost the use of his right hand, probably for life, besides several other ghastly wounds. Hurk Dutt's left forearm was cut through, dividing both bones, and the tendons of his right wrist severed. Baboonath received a sword cut on the left side, which penetrated to the lungs.

“The affray took place in the immediate neighbourhood of the zemindaree cutcherries of mouzas Chuppa and Khatereea. Goonee Jha resides in Khatereea.

“The affray seems to have been brought about by a long course of enmity and litigation between Telokechand Sahoo, zemindar of Chuppa, Doorjun Singh, moostajir of Khatereea, and Goonee Jha, prosecutor, who is one of the *ryots* of Khatereea.

“The prisoners were led on by Bindabun and Dewan Singh (Nos. 1 and 2), servants and *tuhseeldars* of Teloke and Doorjun, who were doubtless the instigators of the plot, though there is not sufficient evidence to bring the fact home to them. The attack seems to have been premeditated, from the previous collection of the prisoners in the Chuppa cutcherry, while there is no evidence worthy of the least confidence of the prosecutors' being in any way the aggressors or having arms of any sort, even *lattees* in their hands, and none of the opposite party being wounded or in any way hurt; one shows a slight cut on the shoulder, but it was probably inflicted by himself. At the same time I do not think there was an intention to kill, for the wounds inflicted, though dangerous, from the force with which they were struck, were evidently not aimed at any vital parts.

“There were twenty-one witnesses for the prosecution; but I examined only nine, Nos. 1, 2, 3, 4, 5, 11, 12, 16 and 17. Their evidence being complete and conclusive against all the prisoners, it was quite unnecessary to cumber the records with further depositions to the same facts. All the nine witnesses were closely cross-examined by the prisoners under advice of their several *mookhtars*, but no discrepancy or breakdown of any moment was elicited.

“The defence of all the prisoners was nearly the same—a denial of the charge and declaration of absence, at the time stated, from the spot indicated. Some state that Goonee Jha came with a large force to plunder Pirtam Gowala's house, *viz.*, that on which the peadas' notice was served, Pirtam being father of Shiblall. Fifty-six witnesses, all in fact that were in attendance,

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were examined for the defence ; they mostly attempted to prove an *alibi* for their several principals, but their evidence was totally unworthy of credit. The witnesses to character were not examined, as their evidence could not have in any way affected the sentence against the prisoners.

“ The jury find all the twenty-one prisoners guilty of the full charge of riot with severe wounding, in which I fully concur. The evidence shows that eight or ten only were armed with swords, the rest with *lattees* ; but it also proves that when the prosecutors were struck down by the swordsmen, those with *lattees* set on them and beat them cruelly. The ringleaders of the affray were Bindabun and Dewan Singh (prisoners Nos. 1 and 2,) and the chief actors among the swordsmen, besides the above, were Sheikh Mulhoo (No. 3), Shiblall (No. 4), Gheenoo Shahoo (No. 5) and Ujoodheea Tewary (No. 7), and one Lokanath, not yet arrested. Under all the circumstances, however, I think that no distinction of punishment should be made. All are found equally to have joined in a cruel and cowardly attack, through which the prosecutors have received grievous and lasting personal injury. I therefore sentence the twenty-one prisoners, from Nos. 1 to 21 inclusive, to imprisonment with labor and irons for seven (7) years. I had some doubts as to the terms of the indictment *first*, as to whether the word ‘affray’ should not have been used instead of ‘riot,’ and *secondly* whether it was not rather an aggravated assault than either riot or affray. The *gravamen* of the offence, however, was the *severe wounding* ; and this being fully brought home to all the prisoners, the mere term prefixed to it is of little consequence, as in no way affecting the pleading for the defence.”

Remarks by the Nizamut Adawlut.—(Present: Mr. W. B. Jackson).—“ I see no reason to interfere with the sentence in this case. Three men were wounded severely in the affray, with swords, and when down they were severely beaten with clubs by the rest of the rioters. The crime of the prisoners is aggravated by the fact that the prosecutor was in company with two peons of the civil court, entrusted with the execution of a civil process, when this attack and wounding took place. This riot and wounding was thus also accompanied by resistance of the court’s process. The evidence of the eye-witnesses has in no respect been shaken by the arguments of the pleaders Kishen Kishore Ghose and Jugdanund. I confirm the sentence.”

PRESENT :

R. H. MYTTON, Esq., *Officiating Judge.*

RAMANOOGROHO ROY

versus

LOKOO BAWRI (No. 1), HARADHUN BAWRI CHOW-
KEEDAR (No. 2), GOPAL BAWRI (No. 3), FUQEER
BAWRI (No. 4), DEGA BAWRI (No. 5), TOOLSEE
BAWRI (No. 6) AND GOVIND BAWRI (No. 7).

CRIME CHARGED.—1st count, Nos. 1 to 7, having, on the night of 23rd September 1851, corresponding with 8th Assin 1258, committed dacoity in the house of the prosecutor, and plundered his property to the value of rupees 774; 2nd count, Nos. 1 to 4, having taken and kept in their possession property acquired by the above-mentioned dacoity, knowing it to have been so acquired; and 3rd count, No. 5, privy to the crime mentioned in the first count.

CRIME ESTABLISHED.—Nos. 1 to 5 and 7, dacoity in the house of the prosecutor and plundering his property to the value of rupees 774, and No. 6, accessory to the above dacoity.

Committing Officer, Mr. A. W. Russell, officiating joint magistrate of West Burdwan.

Tried before Mr. P. Tayler, sessions judge of West Burdwan, on the 12th June 1852.

Remarks by the sessions judge.—“This dacoity bears a more professional appearance than any I have yet had before me in this district; for it is in evidence that a *mussul* or *mussals* were used, but not till the house or room which contained the property had been entered; that the same were extinguished before the robbers departed, and that some of the more bulky portion of the property carried off was found buried in various places pointed out by the prisoners before their written confessions were taken.

“None of the dacoits was recognized, nor is it proven that any of them resorted to violence. The prosecutor’s servant, Deenonath Tamoolce, (witness No. 5,) certainly stated that he and an idiot who was sleeping in the compound, received a blow each, and were told to hold their tongues; but it does not appear that they had marks to show.

“The darogah of Neamutpore, which is nine *cos* off, was on the spot the day after the dacoity took place, and remained in the prosecutor’s village, making search and inquiry up to the 19th Assin, when Nuffur Khara, (witness No. 4, *chakladar*) came and told him that Lokoo Bawri (prisoner No. 1), who resided in a village close by, had acknowledged his presence at

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RI and others.

Sentence of
sixteen and
fourteen
years’ im-
prisonment, on
prisoners con-
victed of da-
coity confirm-
ed.

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the dacoity. On that individual's house being searched, certain small silver articles, recognized by prosecutor, were found in his *chuppur*, and he confessed (orally) that he had been at the dacoity with Dega Bawri (prisoner No. 5) and others, and said he would point out a *lotah* and a pair of *jungeas*, or short drawers, which he had buried in the bed or bank of the Damoodah river. He did so, and his written confession was then taken. As this named Dega Bawri (prisoner No. 5) as the instigator, and Haradhun Chowkeedar (prisoner No. 2) as the leader of the dacoits, the houses of both were next searched. Nothing was found in that of Dega, but Haradhun's produced two old rupees, which he claimed as his own, and a pair of scissors, and he thereafter pointed out, before the witnesses named in the calendar, a quantity of brazen vessels which he had hidden in a cotton-field. The confessions of both were thereafter taken. Dega declared in his, that he had refused to have anything to do with the dacoity, but that he was aware it was going to take place; had caused Lokoo, (No. 1), to join the band, and expected a share of the spoil, but got none. He added that a relation of the prosecutor, named Harachand Chatterjee, had been the instigator of the dacoity. Haradhun's confession set forth, that Munna Bawri, Govind Bawri, (prisoner No. 7), Fuguer Bawri (prisoner No. 4), Nyan Bawri, Heeroo Bawri, Gopal Bawri (prisoner No. 3), and himself had been collected for the purpose of committing the dacoity by Dega Bawri (prisoner No. 5); and after describing the way in which the deed was done, enumerated the articles which he had personally succeeded in appropriating, and which he had just before pointed out. This prisoner did not, it appears, acknowledge his participation in the dacoity immediately, but took a day to consider. Gopal Bawri (No. 3), mentioned in Hara's confession, was the next prisoner questioned, and he also at first denied, but afterwards acknowledged, that he had participated in the crime. The property pointed out by him consisted of a mosquito curtain, *merzaies*, and other miscellaneous articles of clothing, &c., which were found under or in a bush, growing on the edge of a tank. His written confession was then taken on the spot. Fuguer Bawri (No. 4), also mentioned by the prisoner Hara, was next questioned, when he confessed (orally), and pointed out certain articles concealed in a broken vessel in his maize field; after the discovery of which, his confession was written down. Govind Bawri (prisoner No. 7), also mentioned by Hara, confessed that he had been present and received a red *suree* from the said Hara, which he sold on his account for four annas, to one Ramchand Chatterjee, who, however, did not support the statement. Toolsee Bawri (prisoner No. 6) was apprehended by the advice of Nuffur Khara, the *chakladar*, (witness No. 4), because his dwelling was close to that of the

prisoner Dega (No. 5). His house was searched without success ; but he confessed that he had, at the said Dega's instance, attended the dacoity in the capacity of a *mooteea*, or porter, without entering the prosecutor's house, or getting anything for his pains, he also affirmed that one Roodro Roy, a relative of the prosecutor, was present at the dacoity and received a box containing a portion of the property.

" All the prisoners committed mentioned each other in their several confessions. Toolsee (No. 6) alone was not mentioned by any of the others ; but his own confession was sufficient proof against him. All the prisoners declared that Dega (prisoner No. 5) was the instigator of the dacoity ; and there was no apparent reason for their saying so, if he was not. The confessions made before the joint magistrate (Mr. G. A. Pepper) were sufficiently similar to those made by the prisoners in the Mofussil. The only additional circumstance, worthy of note, mentioned in them, was, that one Harachand Chatterjee, a connexion of the prosecutor, had been the instigator of the dacoity, and present at it. The apprehension, the *sooruthal*, the confessions, and the finding and recognition of the property, were duly sworn to ; and I saw no reason to doubt the evidence given. A good deal of it was of such a nature as to raise a strong suspicion that there existed two *duls*, or bands, of dacoits in the neighbourhood of the prosecutor's village, of which the prisoner Hara (No. 2), and one Puncha Bawri (said to be now under trial in Maunbhoom) were the leaders ; and that all the prisoners belonged to Hara's regular band ; but I did not consider it conclusive. Every effort was made to draw various, apparently respectable, relations of the prosecutor into the case by the prisoners, but without effect. It having been mentioned by various witnesses that Harachand Chatterjee, above-named, and one Kishen Mookerjee, also a relation of prosecutor, were of doubtful character, and that their houses had been searched in a case of burglary, in which another mutual connexion of theirs had lost much property, I sent for the case, and found that suspicion had been therein cast upon the above persons by Nuffur Khara, *chakladar*, (witness No. 4 in the present cases,) and Manick Dabee Chowkeedar, dismissed for neglect in ditto. Nuffur Khara's personal appearance, the easy way in which he obtained his clue to this dacoity, his apparent acquaintance with the prisoners, and the suspicion thrown by him upon the prosecutor's relations and connexions when questioned by me, led me to look upon him as a very doubtful character, though a police officer, but not so far as to prejudice his evidence in the case, which was supported by the confessions of the prisoners themselves, and the finding and recognition of the property above noted.

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"All the prisoners denied their Mofussil and foudjaree confessions, and attempted some sort of defence.

"All of them, except No. 5, declared that they had been beaten by the police to make them confess. Nos. 1, 2, 3, 4 and 6, endeavoured to make out that Nuffur Khara had brought the property they were accused of plundering to the mohurir himself; No. 2 pleaded *alibi*, and No. 7 declared that his father and brother had been beaten by the police, as well as himself. Not one of their witnesses, however, had a word to say in support of their allegations.

"Under all the circumstances above concentrated, I convicted prisoners Nos. 1, 2, 3, 4, 5 and 7, as principals in the dacoity, and prisoner No. 6, as accessory, and sentenced them as noted.

"I inflicted a heavy punishment, because there was strong reason to believe that the prisoners were professional dacoits.

"I at the same time warned the officiating joint magistrate against Nuffur Khara (witness No. 4), and communicated to him my suspicions of the existence of two bands of dacoits in the neighbourhood of the prosecutor's residence, as above alluded to.

"The joint magistrate, Mr. Pepper, put more questions to the prisoners when their confessions were taken by him, than were necessary or proper; but as that gentleman had long left the district, I did not consider it advisable to call upon him for any explanation.

"The property in this case was peculiar, and easily recognizable. The houses of many of the prosecutor's relations and of certain other persons mentioned as their accomplices in the confessions of the prisoners, were searched for the residue of the plundered property, but without result.

"The thanna papers were carefully examined by me. Two lists of property were taken, one before the same was discovered, and one afterwards. The darogah, witness No. 2, explained this by saying that the prosecutor had not been able to recollect everything that had been plundered from him at first; though this was probably the fact, and the prisoners did not deny that the property belonged to prosecutor (a pair of scissors and two rupees excepted) the preparation of the second list was irregular; and I have directed the officiating joint magistrate to warn the police against such a course in future."

Sentence passed by the lower court.—Nos. 1, 3 and 4 to 7, each, twelve (12) years' imprisonment, with labor in irons, in banishment, and two (2) years' more in lieu of corporal punishment, also with labor in irons, altogether fourteen (14) years' imprisonment, with labor in irons, in banishment; and No. 2, twelve (12) years' imprisonment with labor in irons in banishment, and two (2) years in lieu of stripes also with labor in irons, and two (2) years' more in consequence of his being a chowkeedar,

altogether sixteen (16) years' imprisonment, with labor in irons in banishment.

Remarks by the Nizamut Adawlut.—(Present: Mr. R. H. Mytton.)—"The confessions of the prisoners are very circumstantial, and have every appearance of truth as to the main facts. The proof against them is conclusive, and there is no reason to interfere. The appeal is therefore rejected.

"With regard to the concluding observations of the judge, the court may remark that there is nothing in the law to preclude a darogah from taking a supplemental list of articles omitted in the original list, and in the present case no suspicion of any wrong motive attaches to the police officer for doing so."

PRESENT:

J. R. COLVIN Esq., Judge

A. J. M. MILLS, Esq., Officiating Judge.

GOVERNMENT

versus

SETABDEE SHEIKH (No. 1), DEERNOO, MOOCHEE (No. 3), MODHOOSOODUN BISWAS (No. 4), ZUMEERUDEEN BISWAS (No. 5), GORAE SHEIKH (No. 6), JADOO HOLDAR (No. 7) AND THAKOOR SALAHAI (No. 8).

CRIME CHARGED.—*Charge First*.—1st count, wilful murder of one Omesh Ghose; and 2nd count, accomplices in the wilful murder of the said Omesh Ghose. *Charge Second*.—Forceful seizure of cattle of Omesh Ghose and others, in the prosecution of which the said Omesh Ghose was killed: *Charge Third*.—1st count, severely wounding Omesh Ghose, (since deceased); and 2nd count, accomplices in the said wounding.

Committing Officer, Mr. C. F. Montresor, magistrate of Nuddea.

Tried before Mr. E. Bentall, additional sessions judge of Nuddea, on the 11th June 1852.

Remarks by the additional sessions judge.—"The cattle of Omesh Ghose were grazing not far from his own village of Bhagulpore, which is about two *coss* from the indigo factory of Durmdah, and a party of the factory people came and carried off his cattle, and on his going to the spot, he was speared in the back by one of the party. The assigned reason for seizing the cattle was to compel the cultivation of indigo in the village, in which none was usually grown. Notice of the above circum-

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Case of
SETABDEE
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others.

Prisoners convicted of being parties to an armed assemblage for forcible and illegal purposes, in furtherance of which a man, named Omesh Ghose, was dangerously wounded by the thrust of a flat-headed spear.

The leading prisoner sentenced to imprisonment with labor and irons for nine years, another prisoner to the like imprisonment for seven, and the remainder for five years.

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Case of
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stance was at once taken to the thanna by the chowkeedar, whose evidence was written, and he said that Jadoo (prisoner No. 7), Modoo Dass (prisoner No. 4), and Ramdyal (prisoner No. 2), (who died in jail before the trial), were engaged with others in taking off the cattle. Omesh Ghose was taken to the sudder station; and on the 1st of April he made a deposition before the magistrate, in which he accused all the prisoners, having, on the same day on which he was wounded and before he left his own village, accused them in a deposition which he made on oath before the thanna mohurir. He was sent to the poor hospital, where he was so ill on the 5th of April, that the magistrate took his evidence, under the supposition that he was *in articulo mortis*. He was then only asked respecting two men who had previously been apprehended, Setabdee and Ramdyal, whom he recognized, but he was not asked the names of the other persons whom he had recognized when he received the wound. As he made this deposition, according to the evidence of the assistant surgeon, under the impression that he was about to die, it may be received as evidence, notwithstanding that afterwards he got so much better that he was able to walk about the jail hospital. During the time that he was so much better, he repeatedly asked for a higher diet than he had been allowed; this was refused him, but by the help of his brother, who attended on him, it appears that he got a variety of food contrary to the express injunctions of the medical officer, and the next day he was attacked with fever, which occasioned his wound to reopen, and brought on inflammation on the chest, &c., which caused his death on the 16th of April. The medical officer who attended him, and who carefully examined his body, deposed as follows:—‘In my opinion the man would not have died if he ‘had not broken the rules of the hospital, by eating what he ‘was told not to eat;—also that he would not have died if he had ‘not had fever;—also that he would not have died if he had not ‘received the wound. Over-eating himself, and the heat of the ‘weather, occasioned fever, which was the cause of death, but ‘neither would have occasioned death in the manner above described, if they had not supervened on the receipt of the ‘wound.’

“Now, considering the degree of convalescence to which the prisoner had attained, there is every reason to suppose that, with moderate and reasonable care, he would have recovered, and that his death was brought about by the imprudent excess of eating, in which he indulged without the intention of injuring himself; but still the wound was the original cause of death.

“There is every reason to suppose that the witnesses Nos. 1, 2, 3 and 4, were present when the attack was made, and there is

no reason to doubt their recognition of the prisoners, except that they should generally have recognized the same persons, to many of whom they had never spoken; but as the prisoners were factory servants, they would, no doubt, have taken a conspicuous part in the affair, and from their usual occupation they must have been generally well known in the neighbourhood by sight—Setabdee Sheikh (prisoner No. 1) was apprehended on the spot. Now it is incredible that he, who is an active man, should have allowed himself, if he were guilty, to be apprehended, when his fellow-servants were able to drive off a large herd of cattle in the presence of the small party who could assemble to oppose them; yet even Omesh Ghose stated, in what he believed to be his dying declaration, that this person was with the offending party, and had a *lattee* in his hand. The prisoner's witnesses, who, however, were not mentioned until after the commitment was made, state that he was at a neighbouring village and left it alone, and the witnesses for the prosecution gave their evidence as if he had not been a party to the attack. He was no doubt present when the crime occurred, or very soon afterwards; but I do not think that he went there with any evil intention, or with others, or that he expected to be accused; for he would otherwise have retreated with the factory people: and this circumstance is so very strong a point in his favor that I acquit him. Each of the other prisoners have endeavoured to prove an *alibi*; and Nos. 4, 5 and 7, brought many witnesses to show that they were elsewhere, but their witnesses were not named until they had much leisure to collect evidence, and consequently less confidence can be placed in them. An order was passed for their apprehension on the 5th of April, but none of them, except Deenoo (prisoner No. 3) could be found on the 13th of April, and on the 16th they gave themselves up. Nos. 4 and 7 were each recognized by two witnesses, who had known them for a year or more, as well as by other witnesses; but Zumeeruddeen (No. 5) was recognized by only one witness, *viz.*, No. 5, who had long been acquainted with his person; the others, however, generally recognize him, and one of them No. 1, had seen him in a private house in the village of Hatshala.

"A case, which was similar to this, No. 3 of February last, was tried by me on the 3rd of March, in which one Ram Single and another were sentenced each to fourteen (14) years' imprisonment on a reference to your court. The prisoner Ramdyal, No. 2 of this case, who died before the trial took place, was committed also for having been engaged in that case, and is supposed to be the individual who committed that murder. He was then employed by the same indigo planter, but at a different factory. It must, however, have been well known, that he was

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engaged in the other affair ; and the criminality of the persons who were engaged in this is greater, in that they proceeded to commit an illegal action with a man who they knew had so lately killed a man when committing a similar crime. Although Omesh Ghose was murdered, yet none of these prisoners had any enmity towards him ; and taking the other case as a precedent, I consider it my duty to propose that these prisoners, *viz.*, Nos. 3, 4, 5, 6, 7 and 8, be each sentenced to fourteen (14) years' imprisonment with labor."

Remarks by the Nizamut Adawlut.—(Present : Messrs. J. R. Colvin and A. J. M. Mills).—" We see no ground to doubt the correctness of the finding by the law officer in this case. He would convict all the prisoners on the second charge, which, though not technically and exactly expressed, is plainly intended to cover the actual facts of the transaction. These are that the prisoners and others went in an armed body from the factory of Durmdah, and forcibly seized the cattle of the villagers, for the purpose of taking them to the factory, in order to induce the *ryots* to come in, and to accept advances for indigo cultivation,—that, in the prosecution of this illegal violence, they were remonstrated with by the deceased, Omesh Ghose,—and that on his offering this opposition, the prisoner No. 7, Jadoo Holdar, called out in general terms to strike or beat him, and that he was then stabbed in the back with a spear by Bishendyal, *alias* Ramdyal Pande, a burkundauz of the factory, who died in jail before trial.

" Omesh Ghose, after being at one time on the point of death, recovered, and became convalescent, so as to be able to walk about the hospital and compound ; and the wound had filled up, but had not skinned over, when, by clandestinely procuring improper diet, in opposition to repeated prohibitions of the medical officer, he brought on fever, which, acting on the state of body produced by the wound, caused death.

" It has been urged before us for the Government, upon the English authorities, that the conviction must be for murder, notwithstanding the irregular or disorderly course of diet followed by the deceased, in disregard of the directions of the surgeon of the hospital. On the other hand, the principles of the Scotch law appear to be considerably different, when death is owing not to the natural and accustomed consequences of an injury, but to subsequent intervening accidents of remote connexion with that injury.

" Had the man Bishendyal Pande, who actually inflicted the blow, been before us, it would have been necessary to form, and to declare, an exact opinion upon this point. But we do not feel it necessary to dwell on the niceties respecting it in pronouncing on the guilt and sentence of the present prisoners.

"We are satisfied, on the evidence, that all of them were parties to an armed assemblage for forcible and illegal purposes, in furtherance of which Omesh Ghose was, at the least, very dangerously wounded by a thrust, which must have been of great violence, of a flat-headed spear. All the prisoners have been named as concerned in the violence from the first day of the occurrence, and there is nothing in the contrary evidence on their behalf on which reliance can be placed.

"We think that the additional sessions judge has shown no good reasons for his proposal to acquit the prisoner No. 1 Setabdee Sheikh, whom the law officer convicts. He was clearly acting with and abetting the others.

"The act of seizing the cattle by means of an armed body of men, and in reckless inattention or indifference to the probable consequences, was one of great lawlessness, requiring an exemplary sentence.

"Upon these considerations, we sentence, in reference to the above conviction, the prisoner No. 7, Jadoo Holdar, who was evidently the leading man from the factory (he is called in the evidence the *Chota Dewan*), to imprisonment with labor and irons for nine (9) years, Modhoosoodun Biswas, No. 4, (factory ameen) to the like imprisonment for seven (7) years, and all the other prisoners to the like imprisonment for five (5) years."

PRESENT :

SIR R. BARLOW, BART., *Judge*.

GOVERNMENT

versus

KALOO JEMADAR (No. 1), SALOO ALIAS SULLIM (No. 2), GOLAM HOSSEIN (No. 3), RUHMUTOOLLAH (No. 4), USGUR (No. 5) AND MEHEROOLLAH (No. 7).

CRIME CHARGED.—1st count, wilful murder of Panjoo Khan; and 2nd count, riot attended with the culpable homicide of Panjoo Khan, and the wounding of Nehal Khan, and binding Abbas Khan and detaining him in confinement.

CRIME ESTABLISHED.—Riot attended with the culpable homicide of Panjoo Khan, and the wounding of Nehal Khan, and binding Abbas Khan with a rope and detaining him in confinement.

Committing Officer, Mr. H. C. Halkett, magistrate of Backergunge.

Tried before Mr. A. S. Annand, officiating sessions judge of Backergunge, on the 19th April 1852.

Remarks by the sessions judge.—"The Government was prosecutor in this case. The prisoners denied the charges on which

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they were arraigned, both in this court and before the magistrate and in the Mofussil, and say that they were attacked by certain of the present witnesses, who were sent in by the darogah as defendants. Witness No. 1 Abbas Khan, states, that on the 22nd Aghun last, he and his father, Nehal Khan, and his father's wife, Agurja, and his brother, Panjoo Khan, set out, about 8 in the morning, from the house of Manick Akhoond, with whom they were then living, to see Ramzan Khan, the uncle of witness, who was sick in mouza Habeetpore; that when they came to a *baree* which had formerly been let to Nehal Khan, and underlet by him to one Oomer Khan, prisoner No. 1 and others, *ryots* of Mirza Mehdee, amounting to fifty or sixty men, attacked them; that prisoner No. 1 inflicted two wounds on the thighs of Panjoo Khan with a *sulfee*, and prisoner No. 2 wounded Nehal Khan in the thigh with a dart, from the effects of which he became senseless; that witness then called for assistance, when the prisoner seized and wounded him, and beat him until he was senseless; that the darogah came that night and commenced his inquiry on the morning following; that the prisoner, having killed Panjoo Khan, wounded Nehal Khan, and beaten witness, went away.

"The cause of quarrel this witness states to be a dispute for a certain piece of land between Mirza Mehdee and Mirza Jaffier; that in the past year his (witness's) brother, Panjoo Khan, deceased, and his father Nehal took service with Mirza Jaffier, and on that account Mirza Mehdee's men got up a complaint in the foudaree against them, and they were imprisoned, and whilst in jail their house was plundered and burnt by Mirza Mehdee's men, on which account they afterwards went to live elsewhere; That on the day of the occurrence they were going peaceably to see their relative Ramzan, who was sick, when the prisoners attacked them as above stated.

"This witness recognizes and identifies all the prisoners.

"Witness No. 2, Nehal Khan, the father of the last witness, deposes to the same effect, and witness No. 3, Agurja, the wife of the last witness, the same likewise.

"Witness No. 4, Neganooddeen, states that on the 22nd Aghun, about 8 in the morning, he saw from his house, which was very near the scene of action, witness No. 2, Nehal Khan, with a stick in his hand, Panjoo Khan, deceased, armed with a large *dão*, and Abbas Khan, armed with a *dão* also, and Chuth Khan and Musst. Agurja, unarmed, come together to the *baree* which had been let to Nehal Khan, and on which land prisoner No. 6* Hùbbeboollah, prisoner No. 7 Meheroollah, prisoner No. 5, Usgur, had now built a house; that shortly afterwards he heard a noise there, and going to the spot heard

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Panjoo Khan and witness No. 1 Abbas, asking prisoner No. 6 Hubbeeboollah, why he had put up a house in their *baree*. Hubbeeboollah and the others said 'what is it to you, we have a 'lease from the auction purchasers,' and then seeing *dãos* in their hands he called to Kaloo Jemadar, when about ten men, armed with *sulfees*, darts, shields, and clubs, came forward and began talking, and then fighting, and hearing that Panjoo Khan was killed, prisoner No. 1, Kaloo Jemadar, and his party, ran away. Going up; saw that Panjoo had a wound on each thigh, two wounds upon his head, and one upon his hip, and was dying; that Nehal Khan had two wounds inflicted by a *sulfee* on the right and left thighs, and that Abbas Khan was bound. Witness then came away.

"The cause of the quarrel was witness No. 2, Nehal Khan, having been turned out of this *baree*, which he had formerly leased, by the auction purchaser, Obhai Churn Bonnerjea, he having got up a complaint against him and others charging them with intending to commit a breach of the peace; on which charge they were sent to jail, and whilst there this dispossession was effected, and prisoner No. 1, Kaloo Jemadar, and prisoner No. 6, Hubbeeboollah, and prisoner No. 7, Meheroollah, and prisoner No. 5, Usgur, obtained pottahs for the land; since which time and on that account there had been ill-feeling between the witnesses Nos. 1, 2, 3 and 4, and the prisoners. This witness recognized and identified all the prisoners. The bulk of the evidence corroborates this story, which is no doubt the truth. The witnesses Nos. 1, 2, 3 and 4, had no reason to go to Hubbeeboollah's *baree*, situated on the land which witness No. 2 had formerly held, and from which he had been lately ejected. It was out of the way to Ramzan's house; and if they had been going peaceably to see a sick man, they would not have been armed with *ddos*. Their object in going was, I imagine, to regain possession of the land if they could peaceably, if not forcibly, as they had been themselves dispossessed, and the presence of the woman shows that they expected little or no resistance, and to be able to establish themselves at once on their old premises. In this they were disappointed, and the result has been given above.

"The uncovenanted assistant surgeon deposes that he found a punctured wound in the inside of the left thigh of Panjoo Khan, which divided the femoral artery, and must have caused speedy death by excessive hemorrhage, and two wounds on the head, which though severe would not have caused death. That witness No. 2, Nehal Khan, had two punctured wounds on the inside of the left thigh, each wound three inches long, very deep, and of a most dangerous character.

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"The jury who assisted me in trying the case are of opinion that an affray took place which was attended with the results above given, and convict prisoners Nos. 1, 2, 3, 4, 5 and 7, of riot attended with the culpable homicide of Panjoo Khan, the wounding of Nehal Khan, and binding Abbas Khan. In this opinion I concur, and think also that the magistrate should have committed both parties to take their trial for an affray attended with culpable homicide and wounding, instead of a riot, &c., as entered in the column 9 of this statement."

Sentence passed by the lower court.—Each, three (3) years' imprisonment, and a fine of rupees fifty (50) or labor.

Remarks by the Nizamut Adawlut.—(Present: Sir R. Barlow, Bart.)—"I am quite satisfied that Nehal Khan, the father of the deceased Panjoo, and Abbas Khan, his brother, should have been committed to the sessions as well as the prisoners. Nehal and his sons went armed with *ddos* to the house of Hubbeebollah, who had possession of Nehal's *howalah*, sold to Obhai Churn Bonnerjea for balances, who gave a pottah to Hubbeeb. On reaching the house there was a dispute between them. Hubbeeb cried out to the prisoner No. 1, Kaloo Jemadar, who, also armed, came to his assistance, with other prisoners. From words they proceeded to blows; and the result was the murder of Panjoo, who received a spear wound in the thigh, which separated the great artery, and caused his almost immediate death. Nehal and his sons were seen and recognized by several eye-witnesses on their way to Hubbeeb's, with *ddos* in their hands, and the mutual assault was also seen by several persons unconnected with either party.

"The prisoners all endeavoured to establish *alibi*, but fail in toto. Kaloo Jemadar appears to have taken a leading part in the affray. He is in the service of Mirza Mehdee, who sold Nehal's holding when it was bought by Obhai Churn Bonnerjea, the Mirza's *mookhtar*, and given over to Hubbeebollah. Though the deceased with Nehal and his son Abbas, by going to the house armed were the aggressors, it is not shown in evidence that they made use of their arms, and none of the prisoners' party were wounded.

"I confirm the sessions judge's sentence on the prisoners; nothing urged in their appeals exculpates them."

PRESENT :

R. H. MYTTON, Esq., *Officiating Judge.*

GOVERNMENT

versus

ROGHOONATH PAL (No. 2), SHEIKH BOODHIYE (No. 3), SHURRUN MALLEE (No. 4), SHEIKH MOKYE (No. 5), SHEIKH SHURFOODEEN (No. 6), CHURRUNRAM CHOWKEEDAR (No. 7), COODRUTOOLAH, ALIAS COODO (No. 8), DOORGARAM SINGH (No. 9), JOOGUL SINGH (No. 10), RAJKISHORE DEB (No. 11), RUTTUN SINGH (No. 12), SHEIKH NONYE (No. 13), BURKUTOOLAH, ALIAS BURKUT (No. 14), SERAJOODEEN (No. 15), SHEIKH MUJJO (No. 16), ALLIM (No. 17), TORABOODEEN (No. 18), JUGGENNATH DAS, ALIAS JUGGA SINGH (No. 19) AND SHEIKH DAGOO ALIAS DAGANEAH (No. 20).

CRIME CHARGED.—1st count, wilful murder of Budder Oodeen ; 2nd count, premeditated affray with the culpable homicide of Budder Oodeen, accompanied with wounding of prisoners Nos. 3, 4 and 12 ; 3rd count, privy to the above charges ; 4th count, Nos. 2 and 11, aiding and abetting the crimes charged in the 1st and 2nd counts ; and 5th count, having procured, counselled, abetted and caused the commission of the above premeditated affray attended with wilful murder and wounding.

CRIME ESTABLISHED.—Counselling and procuring an affray attended with culpable homicide.

Committing Officer, Mr. W. B. Buckle, magistrate of Sylhet.

Tried before Mr. F. Skipwith, sessions judge of Sylhet, on the 8th April 1852.

Remarks by the sessions judge.—“ This is a case of affray attended with homicide arising out of an attempt made by Roghoonath Pal and his party to break down an embankment newly erected by Rajkishore and his party, by which the first-named party considered themselves to be aggrieved.

“ It has been difficult, indeed impossible, to procure evidence which is free from all suspicion, as the witnesses of one party are dependents and interested in the destruction of the bund, while those of the second party are dependents to Rajkishore, their leader, and are of course influenced by him ; while nearly all on both sides have been more or less implicated in the affray. The spot where the affray occurred is surrounded by the lands of the two parties, and the evidence offered is therefore the best procurable. The commission of an affray is admitted, and many of the prisoners allow they were present as spectators, but deny

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Sentence of seven years' imprisonment against the leaders in an affray with homicide, confirmed. Held that there is no legal impediment to alteration by the Nizamut Adawlut, in a finding in the sessions court, the prisoners having been tried on the charge considered by the Nizamut Adawlut the appropriate one.

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their participation in it. The evidence for the prosecution is however conclusive against the whole, while that for their defence rather criminate them than otherwise.

“ It is proved that Budder Oodeen, the deceased, was in the affray, and was beaten, and that he died on the evening of the same day.

“ The civil surgeon deposes to a severe blow on the neck, the fracture of three ribs and the rupture of the spleen, the two last injuries being probably caused by the same blow, and several other bruises; but the *sooruthal* held in the Mofussil makes no mention of the fracture of the ribs and other bruises.

“ Rajkishore has taken advantage of this discrepancy to urge that the deceased was probably beaten after death; but of this there is no evidence, and indeed no ground of suspicion. His relations took him first to his zemindar’s house, and then to his own, where he died; so that the presumption is that the broken ribs were undiscovered or wilfully omitted in the *sooruthal*, for Uzjuboodeen, Sonaoollah and Shorut Khan, have deposed to the existence of a bruise there previous to death. The surgeon deposes to the corpse being that of a healthy man, and states that there were no marks of previous disease about it. The rupture of the spleen was the immediate cause of death.

“ The defence offered by the two head parties is alone worthy of special notice. Roghooonath Pal denies that he was present at the commission of the affray, but admits that he heard the opposite party were prepared to commit one, and that he, in consequence, sent notice to the thanna; but he did not desire his *ryots* to refrain from attacking them, or to desist from their attempt to destroy the bund. Three witnesses have deposed to his having given the order; and their testimony is confirmed by the defence of several of the prisoners, or it might otherwise be open to suspicion, as their depositions were not taken till the 14th February, the darogah having closed his investigation and sent in the prisoners on the 12th. He produced three witnesses, who swore that he was in his house at the time of the affray; but his house, as the witnesses admit, is only one hour’s distance, so that I place no credit in them at all, for natives are not exact as to time.

“ Although Rajkishore denies that he was at the spot where the affray took place, and several witnesses have given negative evidence in his favour by saying they did not see him there, the testimony of the remaining witnesses is conclusive against him. He urges that these witnesses are unworthy of credit, as they bear enmity against him; and in proof of it he has filed copies of a complaint made against two of them, and depositions given by others in other cases. Of the truth of the complaint there is no evidence; for the pleaders admitted the case had been settled amicably, and

the depositions are not shown to be, nor are even alleged to be, false; and this is the only circumstance that would render the present depositions of the witnesses open to suspicion. I see no reason to doubt the testimony of three witnesses, beyond that stated at the beginning of this abstract.

"Rajkishore named several witnesses to prove that he was in his own house, but he only called three, and they have assigned no sufficient reason for going to his house, and neither of them states that he saw the others there, or is able to name a single person in the house, though they declare a great number of persons were in it. I consider such testimony worthless.

"Of the remaining prisoners four have set up an *alibi*, which they have failed to establish by satisfactory evidence, while the others admit their presence, but deny any participation in the affray. This however they are sworn by the witnesses for the prosecution to have done, and it is incredible that they, the *ryots* of the contending parties, should have stood quietly by, while their friends were engaged in a fight.

"I tried the case with the aid of assessors (the law officer and the town *cazee*), and they convict the prisoners Rajkishore and Roghoonath Pal (Nos. 2 and 11), of counselling the affray; Ruttun (No. 12), Nonye (No. 13) and Burkut (No. 14), of culpable homicide in the affray; Serajoodeen (No. 15), Mujjoo (No. 16), Allim (No. 17), Toraboodeen (No. 18), Juggelnath (No. 19) and Dagoo (No. 20), of aiding and abetting the affray; Boodhye (No. 3) and Shurrun Mallee (No. 4), of assault; and Mokye (No. 5), Shurfoodeen (No. 6) and Churn Chowkeedar (No. 7), of being accomplices; and they acquit Goodrutoollah (No. 8), Joogul Singh (No. 10) and Doorgaram (No. 9); but from this verdict I in part dissent. I consider Boodhye and Shurrun Mallee to be guilty of affray attended with homicide, of which crime I also convict Ruttun Nonye and Burkut and the rest (with the exception of Nos. 2 and 12), I convict of aiding and abetting the affray attended with homicide. I agree with the assessors in the conviction of Nos. 2 and 11.

"The evidence against the three parties acquitted is, in my opinion, as strong as that against any of the other prisoners; and I accordingly convict them of aiding and abetting in the affray attended with homicide.

"I directed the magistrate, on a perusal of his *roonukaree* of commitment, to charge the prisoners with the aggravated crime of premeditated affray; but the charge is not, in my opinion, substantiated, though the assessors consider it to be so; but they have in their conviction omitted the word premeditated."

Sentence passed by the lower court.—Nos. 2 and 11, seven (7) years' imprisonment without labor and irons, Nos. 3, 4, 12, 13 and 14, each, five (5) years' imprisonment, with labor in irons,

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and Nos. 5 to 10, and 15 to 20, each three (3) years' imprisonment without irons, and a fine of rupees twenty-five (25) or labor.

Remarks by the Nizamut Adawlut.—(Present: Mr. R. H. Mytton.)—"Mr. Waller has appeared for Rajkishore and his party, and Mr. Norris for Roghoonath Pal and his party in this affray.

"Mr. Waller contends that the adherents of Rajkishore were only defending an attack on their master's property, and if in doing so any one of their assailants were injured, it is no offence on their part, or if it is any, it is a very venial one. With respect to Rajkishore individually, he submits that the evidence to his being on the spot is not trustworthy, and that it is not probable that he, a zemindar, would go to the spot, and that there is no proof against him whatever on the charge of which he has been convicted, *viz.*, counselling and procuring an affray with culpable homicide, and that he cannot now be found guilty on another count. Moreover that he has proved an *alibi*.

"Mr. Norris for the opposite party contends that Rajkishore had no right to stop the water of the brook as he did, and that his client's party were justified in going to get it cut through; that they did nothing to provoke a breach of the peace. As regards Roghoonath, he submits that the evidence first obtained by the darogah, does not implicate him, and that at all events his clients are not deserving of so severe a punishment as the opposite party.

"It appears that Rajkishore entirely stopped the water of the

"The defence offered by the two head parties is alone worthy of special notice. Roghoonath Pal denies that he was present at the commission of the affray, but admits that he heard the opposite party were prepared to commit one, and that he, in consequence, sent notice to the thanna, but he did not desire his *ryots* to refrain from attacking them, or to desist from their attempt to destroy the bund. Three witnesses have deposed to his having given the order; and their testimony is confirmed by the defence of several of the prisoners, or it might otherwise be open to suspicion, as their depositions were not taken till the 14th February, the darogah having closed his investigation and sent in the prisoners on the 12th. He produced three witnesses, who swore that he was in his house at the time of the affray; but his

Akhalya brook, and thereby deprived the villagers below the obstruction of water. This was assuredly an act of aggression on his part. No one has a right to monopolize the whole of the water of a stream, and that Rajkishore himself entertained this opinion is proved by the copy of a plaint, which he filed some time previously against the opposite party, for a similar act of aggression. It appears further that armed men were stationed to guard the bund. The opposite party, instead of trusting to legal measures for their relief, went in a body to obtain it forcibly. Both parties were in the wrong, and it is difficult to say which was most culpable. An

house, as the witnesses admit, is only one hour's distance, so that I place no credit in them at all, for natives are not exact as to time.

"Although Rajkishore denies that he was at the spot where the affray took place, and several witnesses have given negative evidence in his favour by saying they did not see him there, the testimony of the remaining witnesses is conclusive against him. He urges that these witnesses are unworthy of credit, as they bear enmity against him, and in proof of it he has filed copies of a complaint made against two of them, and depositions given by others in other cases. Of the truth of the complaint there is no evidence; for the pleaders admitted the case had been settled amicably, and the depositions are not shown to be, nor are even alleged to be, false; and this is the only circumstance that would render the present depositions of the witnesses open to suspicion. I see no reason to doubt the testimony of three witnesses beyond that stated at the beginning of this abstract.

"Rajkishore named several witnesses to prove that he was in his own house, but he only called three, and they have assigned no sufficient reason for going to his house, and neither of them states that he saw the others there, or is able to name a single person in the house, though they declare a great number of persons were in it. I consider such testimony worthless."

ing parties of both sides acted in a manner very likely to lead to an affray, and the sentence against them is therefore not too severe. It is not contended that the sentence against the subordinates is severe. The appeals are therefore rejected. The judge will recall his warrants against Rajkishore and Roghoonath and issue fresh, substituting the count 'affray with culpable, 'homicide' therein."

affray ensued; a man on Roghoonath's side was killed; and one on Rajkishore's wounded. As regards Roghoonath Pal and Rajkishore, the judge's remarks given in the margin clearly show that he considered it proved satisfactorily that they were present at the affray. The evidence against them is to the fact of their presence at the affray encouraging their respective adherents in their illegal acts. The count on which they have been found guilty does not express this, but rather the being accessory before the fact, of which there is no other than presumptive proof, and to that the judge does not allude.

"He probably considered that the giving orders at the time of the affray was a counselling within the meaning of the fifth charge, but the second count omitting the word 'premeditated' expresses more appropriately their offence. There is no legal impediment, as contended for by Mr. Waller, to an alteration in the finding, the prisoners having been tried on the appropriate charge. The evidence against all the prisoners convicted by the sessions judge is as satisfactory as is usually obtainable in such cases, and the *alibis* of none, appear to be worthy of attention. The lead-

1852.

July 31.

Case of
ROGHOONATH
PAL and
others.

PRESENT :

A. J. M. MILLS, Esq., *Officiating Judge.*

MUSST. GUNGALEE

versus

DHIEAN RAE (No. 6), LULCHOO RAE (No. 7), RAM-
CHURN (No. 8) AND RAMLUGUN RAE (No. 9).

CRIME CHARGED.—1st count, wilful murder of Bhagee Gwala, son of the prosecutrix, and 2nd count, accomplices in the above crime.

CRIME ESTABLISHED.—No. 6, culpable homicide of Bhagee Gwala, Nos. 7, 8 and 9 being present, aiding and abetting in the above outrage.

Committing Officer, Mr. A. A. Swinton, magistrate of Shahabad.

Tried before Mr. W. Tayler, sessions judge of Shahabad, on the 19th March 1852.

Remarks by the sessions judge.—“The proceedings in this case disclose a very brutal and unjustifiable assault, ending in the death of the assaulted man.

“The deceased Bhagee Gwala was engaged in scraping sugarcane in the premises belonging to witness No. 1, when prisoner No. 6 (who is the zemindar of the village) called him to bring some straw.

“The deceased declined, on the plea that interruption in his work would cause him loss, when the prisoner seized him by the arm and dragged him to a short distance from the place, where the remonstrances of the deceased were here repeated and he struggled, when the prisoner, whose house was close at hand, called out, and the other prisoners ran up with sticks in their hands.

“They then attacked the unfortunate man. Prisoner No. 6 struck him on the back with a stick and the others stood by, aiding and abetting the assault.

“The deceased fell insensible. His relations came and carried him off, and he died on the fourth day.

“From the evidence of the witnesses, it is clear that the deceased remained in a state of insensibility from the time he was thus assaulted until his death; that when he died, the prisoners Nos. 6, 7, 8 and 9, endeavoured to prevent the corpse being carried to the thanna. The medical officer cannot state positively, from the appearance of the body, that death was caused by the blow, but he considers it most probable that it was, and could discover no other cause of death whatever.

1852.

August 4.

Case of
DHIEAN RAE
and others.

The conviction of culpable homicide against one prisoner affirmed. Three others were released.

1852.

August 4.

Case of
DHEEAN RAE
and others.

"The facts above narrated are established by the evidence of eight eye-witnesses. The condition of the deceased and the state of the wounds are proved by the *sooruthal*, duly attested by the subscribing witnesses.

"It is thus clear that Dheean Rae, who is *moquddum* of the village, first unlawfully seized the deceased to compel him to perform gratuitous labor; that he then dragged him some distance from the spot where he was engaged in business of his own, and on his struggling to release himself, summoned others to his assistance, and so maltreated the unfortunate man that he died, Dheean Rae himself striking him with a stick, after he had been felled to the ground by the others, not before the court.

"The statement of the prosecutrix as to the condition of the wounded man, from the time of the assault to the time of his death, though unsupported by other direct testimony, is sufficiently conclusive and although the medical evidence does not positively show precisely in what way death ensued upon the blow, yet as far as it goes, it fully corroborates the presumption that it was caused thereby, no other sign of disease or cause being perceptible.

"No. 6 says, the deceased died of disease.

"No. 7 makes the same defence.

"No. 8 says, that he is the uncle of the deceased; that a struggle and fight took place and he ran up to the spot, but he did not strike him.

"No. 9 pleads an *alibi*.

"These pleas are not supported by the evidence.

"The *futwa* finds culpable homicide proved, and declares the prisoners liable to *seerasut*."

Sentence passed by the lower court.—No. 6, seven (7) years' imprisonment, with labor in irons, and Nos. 7, 8 and 9, each, three (3) years' imprisonment, without irons, and a fine of rupees one hundred (100) or labor.

Remarks by the Nizamut Adawlut.—(Present: Mr. A. J. M. Mills.)—"The material plea urged by the prisoners in their appeal is, that the deceased died a natural death, but this is completely rebutted by the testimony of the medical officer, who deposed to the body exhibiting no appearance of disease at all. There can be no reasonable doubt on the evidence that death was caused by violence, and in all probability from the severe blow on the forehead.

"The prisoners Nos. 7, 8 and 9, with two others, not apprehended, ran to the prisoner No. 6, Dheean Rae's, assistance, on hearing him cry out, come, come! but it is in evidence that they did not strike the deceased; indeed not a word is said by any of the witnesses as to their having done anything whatever to assist the prisoner No 6. It is true they had sticks in their hands,

but the peasantry of Behar generally carry sticks, and hearing a cry for help they would naturally arm themselves. It may be said they should have rendered assistance and protection to the deceased, who was being brutally assaulted. The quarrel was sudden and unpremeditated; they knew not who was the aggressor or what led to the quarrel, and it is very possible that they had not time, if they had the inclination, to interfere. The prisoner No. 8 is the uncle of the deceased, and there is nothing in the evidence to show that he was other than on friendly terms with his nephew. It is therefore but reasonable to conclude that he at least would have interfered to prevent the assault, had he been able to do so. Not satisfied of the guilt of the prisoners, I acquit them, and direct their release.

"The conduct of the prisoner No. 6 was most unjustifiable; he instigated the fugitive criminals to assault the deceased, and when they had felled him to the ground, he himself struck him a blow on the back with a club. His guilt is conclusively established, and I see no reason to interfere with the sentence passed on him."

PRESENT :

SIR R. BARLOW, BART.,
AND
J. R. COLVIN, Esq.,
} *Judges.*

GOVERNMENT

versus

PHAY QUAY LEE.

CRIME CHARGED.—Murder.

Committing Officer, Lieut. H. Hopkinson, principal assistant commissioner, Tenasserim Provinces.

Tried before Lieutenant Colonel A. Bogle, commissioner of the Tenasserim Provinces, on the 14th July 1852.

Remarks by the commissioner.—"I have the honor to transmit herewith, to be laid before the Sudder Nizamut Adawlut, copy of my proceedings in the above case, tried by me with the aid of a jury. The prisoner is a Kareen (mountain tribe), who lately came over from the Burmese side with his family, and had only been in the village three days when he committed the murder. From the depositions it will be manifest to the court that no doubt exists as to the guilt of the prisoner, and the case is one without any circumstance of an extenuating character. I therefore feel it my duty to recommend that the prisoner Phay Quay Lee, son of Pha Tay, be hanged by the neck until he is dead.

1852.

August 4.

Case of
DHHEAN RAE
and others.

1852.

August 5.

Case of
PHAY QUAY
LEE.

The prisoner, a Kareen inhabitant of the Tenasserim Provinces, convicted of the deliberate murder of his wife, upon some vague and unsupported suspicion of her misconduct, and sentenced capitally.

1852.

August 5.
Case of
PHAY QUAY
LEE.

" Proceedings of the commissioner.—' Nga Nap Paw, resident of Got Taw village, Salween district, son of Pha Tay, aged fifty-two years, duly sworn, states—that he knows the prisoner, has known him for a long time; he formerly lived in the same village with witness, then he went over to the Burman side of the Salween and married, and after having got three children came over to witness' village with his wife and children, and three days after his arrival killed his wife; I know that he did so because a woman named Mee Thalake told me so one day as I was returning from the jungle, where I had gone to collect leaves to make cigars with. On hearing this I consulted with other villagers and apprehended the prisoner. When I apprehended him, I asked him if it was true that he had killed his wife, but he would give me no answer. I then asked him to accompany me and point out the place where the dead body lay, but he would not; I then took him to the head man at Shuay Goon. The prisoner's daughter, aged about (he does not know how much, but very young,) and her aunt told me where the body lay. I went and saw it; it was lying in a pool. I pulled it out and buried it; the head was very nearly separated from the body; it was the corpse of the prisoner's wife. I recognized it as such; and the aunt and daughter both said it was the body of the prisoner's wife. The daughter told me she had seen her father, the prisoner, kill her mother with a *dáo*. She heard her mother screaming, and when she went near to look she saw her father kill her. When witness went to the spot it was the same day that the murder had been committed. Never heard why prisoner had killed his wife. I apprehended prisoner sitting in his brother's house. His appearance was as now.

" Prisoner and jury having no questions to ask, witness withdraws.

" Hadee Bo, resident of Got Taw village, Salween district, aged thirty-two, son of Pha Tay, and brother of the prisoner, having been duly sworn, states—The prisoner is my elder brother; he lately came over from the Burmese side, had been three days in my house with his wife and three children when he killed his wife. I had been into the jungle picking leaves to make cigars; when I returned the prisoner was sitting in my house; the first witness came and asked me how I was going to manage; I asked him what about; he then explained that he had heard that my brother had killed his wife, and asked me what I meant to do; I replied that in that case the

' only thing I could do was to apprehend him, and make him
' over to the authorities. The first witness and myself then
' went and apprehended him; he begged us not to do so, saying
' he was not mad. I asked him if he had killed his wife, That
' Konyen: he said he had, because she had been guilty of adultery.
' I never heard that she had done so: I thought her a proper
' person; he killed her with a *dáo*; the *dáo* before the court is
' prisoner's. It was found in my house, where prisoner lived;
' there was not any blood upon it or marks when found. I took
' him to the head man at Shuay Goon. I remained there with
' prisoner, but first witness went and searched for the body; they
' found it in a pond; the head was all but cut off; I did not see
' the dead body myself, but those who did told me, that it was
' the corpse of the prisoner's wife, and that his daughter, a child
' about three feet high, had pointed it out to them. First witness
' told me that the child had come crying to my house; my wife
' asked the child why she was crying; she replied that her
' father had killed her mother with a *dáo*, and that she was dead;
' on this my wife went with the child to see what had happened.
' On the way they met a boy named Nga Quet Nee, and took
' him with them; they found the legs of the deceased protruding
' from under the branches of some trees, on which they returned
' to the village; when first witness went out and pulled the
' corpse out of the water and buried it; they said it was the
' body of the prisoner's wife.

" ' Prisoner and jury having no questions, the witness retires.

" ' Nullee Bo, resident of Got Taw village, district Salween,

Third Witness for the
prosecution.

' aged about twenty years, daughter of
' Toung-thoo Bo, wife of second witness,
' having been called into court and duly
' sworn, states.—I know the prisoner; he is called Phay Quay
' Lee; he is my husband's elder brother. He had come from the
' Burmese side of the river only three days, and was living in my
' house with his wife and three children, all little, when he killed
' his wife; I know he did so because his daughter came crying
' home to my house; when I asked her what was the matter,
' she replied that her father had killed her mother, that she had
' seen him do so, and that her mother was dead; the child said
' that it had been done outside the village. I went with the
' child to the place; on the way we met with a boy, Nga Quet
' Nee, whom we took with us, and found two legs protruding from
' the water, and covered over by leaves and branches. On seeing
' this, returned home much frightened and remained quiet; can-
' not say whether the child went and told the other villagers or
' not; does not know who buried deceased; only knows that the
' body seen lying in the pool was the wife of prisoner, because the

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Case of
PHAY QUAY
LEE.

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Case of
PHAY QUAY
LEE.

' child told me so ; only saw the legs. When the little girl came crying to my house, her father, the prisoner, was outside the house ; I did not speak to him. My husband had gone to the jungles for leaves ; when he returned I did not tell him any thing about it, because the prisoner was in the house, and I was afraid. The prisoner and his wife never quarrelled while staying in our house ; never heard prisoner complain of his wife, and never heard that she had committed adultery.

" ' Prisoner and jury having no question to put, witness withdraws.

" ' The prosecution is here closed. "

" ' The prisoner Phay Quay Lee, resident of Got Taw, district Salween, son of Pha Tay, aged thirty-six, having been called on for his defence, states—That he has nothing to say ; that he killed his wife because she had committed adultery ; does not know with whom ; does not know the man's name ; it was on the Burmese side ; saw it himself two or three times, and thought that if he did not kill the woman her paramour would kill him ; could not kill the paramour, so killed the woman ; she was the mother of his three children ; she committed adultery two years before ; he killed her, and one year had elapsed between his last catching her and her death. Has nothing to say.

" ' The defence is here closed.

Verdict of the jury. " " ' The jury are of opinion that the prisoner is guilty.

" ' The court concurs in opinion with the jury ; and as the plea set up by the prisoner is untenable, and the murder is proved, it considers that the prisoner Phay Quay Lee, son of Pha Tay, is liable to the extreme penalty of the law, to be hanged by the neck until he is dead. The proceedings are accordingly to be transmitted to the Sudder Nizamut Adawlut for final orders.

" ' The court remarks with dissatisfaction, that although the case was committed by the principal assistant commissioner, the depositions were taken by the officiating extra assistant commissioner assisting in his department, and directs that this may not occur again'."

Remarks by the Nizamut Adawlut.—(Present : Sir R. Barlow, Bart. and Mr. J. R. Colvin.)—" The prisoner's guilt is clearly proved by his own confessions, the particular circumstances of which are fully established by several witnesses. The finding of the deceased's corpse, its recognition as well as the recognition of the instrument, a *dāo*, which the prisoner admitted to be his, and to have been used by him in the murder, are all sworn to.

"The prisoner states before the officiating assistant commissioner that he murdered his wife because he heard that she had a paramour. In the court of the commissioner he also confessed the murder, because his wife had committed adultery, which he himself had witnessed two or three times; a year had, however, elapsed, according to his own statement, since he last witnessed it, and there is no evidence to the fact. We convict the prisoner Phay Quay Lee of wilful murder, and sentence him capitally, as recommended by the commissioner."

1852.

August 5.

Case of
PHAY QUAY
LEE.

PRESENT:

A. J. M. MILLS, Esq., *Officiating Judge.*

GOVERNMENT

versus

RAMDIAL TEWAREE.

CRIME CHARGED.—Wilful murder of Permah Tewaree.

CRIME ESTABLISHED.—Culpable homicide of Permah Tewaree.

1852.

August 5.

Case of
RAMDIAL TE-
WAREE.

Committing Officer, Mr. A. A. Swinton, magistrate of Shahabad.

Tried before Mr. W. Tayler, sessions judge of Shahabad, on the 15th May 1852.

The conviction affirmed, one of two pleas urged in appeal not having been stated in the defence, and both pleas being unsupported by evidence.

Remarks by the sessions judge.—"The evidence of four eye-witnesses establishes the fact that, on the 22nd February 1852, the deceased demanded from the prisoner, who is his uncle, the payment of certain money (on what account is not stated) when the prisoner replying 'what money', an altercation ensued, and the prisoner with his son, not yet arrested, attacked him with the ever-ready and formidable *lattee*, and each striking him a blow on the head killed him on the spot.

"There are some discrepancies in the evidence on minor points of the transaction, occasioned, I conceive, by an attempt, which has been evidently made by the father of the deceased, the prisoner's brother, to hush up the matter, but the essential fact is distinctly and clearly proved. The medical evidence is distinct as to death having been caused by the injuries received. The whole skull, from the forehead to the occiput, being fractured by the blow.

"The defence is—that the deceased died of epilepsy; that the prisoner was absent when his death occurred. As to the other plea, two witnesses are given to the *alibi*; but their evidence is utterly unworthy of credit. All the witnesses for the prosecution distinctly affirm that the deceased was in perfect health and strength, and the testimony of the civil surgeon is conclusive.

1852.

August 5.

Case of
RAMDIAL TE-
WARRE.

The counsel for the defence in addressing the court has endeavoured to impute hostility to the witnesses, because two of them are shown to have given evidence against him in a trivial cause on a former occasion. He also lays stress upon some minor discrepancy in the evidence elicited by his cross-examination.

"These are so trifling as not in any way to shake the effect of the evidence for the prosecution.

"What the exact origin of the quarrel was, and what circumstances may have previously existed to cause provocation, are not apparent; but the assault, though caused by sudden irritation, was savage and brutal, and calls for severe punishment.

"The *futwa* convicts the prisoner of culpable homicide. I have sentenced him to seven (7) years' imprisonment with labor in irons."

Remarks by the Nizamut Adawlut.—(Present: Mr. A. J. M. Mills.)—"The prisoner has appealed. He urges in his petition of appeal that the deceased fell down in a fit of epilepsy, and that the wound on the head was occasioned by a kick from a bullock, which he was at the time driving. The latter plea was not stated in his defence, and neither of them is supported by evidence. The skull was fractured the whole way from the brow to the occiput, and the surgeon considers it probable there may have been more than one blow. The evidence to the prisoner striking the deceased on the head and killing him on the spot is clear and express. I confirm the conviction and sentence passed by the sessions judge."

PRESENT:

A. J. M. MILLS, Esq., *Officiating Judge.*

RAMJOY DUTT

versus

KARTICK HAREE, CHOWKEEDAR.

CRIME CHARGED.—1st count, dacoity in the house of the prosecutor, in which property to the value of rupees 480-11-0 was plundered, he being at the time employed as police chowkeedar; and 2nd count, accomplice in the same dacoity.

CRIME ESTABLISHED.—Having committed a dacoity while holding the office of police chowkeedar.

Committing Officer, Mr. C. F. Montresor, magistrate of Nuddea.

Tried before Mr. E. Bentall, additional sessions judge of Nuddea, on the 11th June 1852.

Remarks by the additional sessions judge.—“ On the night of the 26th April, a dacoity took place at the house of the prosecutor in the village of Gobepore, which is close to the thanna of Meharpore, and separated from it only by a fordable river. The darogah arrived on the spot soon after the dacoits had gone off, and he was soon afterwards told that these prisoners had been recognized. Ram Sirdar, No. 2, is the chowkeedar of the village, and being in attendance on the darogah at the house of the prosecutor, he was secured, but no attempt was made to apprehend the others, and no persons were deputed to go to their houses to inquire for them during the night, and this neglect of the police would throw doubt on the truth of the evidence if it were unsupported. The prisoner No. 1 is a chowkeedar of the village of Ramjeewunpore, about two *coss* distant from the prosecutor's house. He is said to have been recognized at the dacoity by five different witnesses, and he made a confession of his guilt before the police and again before the magistrate.”

Sentence passed by the lower court.—Fourteen (14) years' imprisonment with labor in irons.

Remarks by the Nizamut Adawlut.—(Present: Mr. A. J. M. Mills.)—“ The prisoner has appealed. His defence is—that his Mofussil confession was obtained by maltreatment, and his foudaree confession by reason of his having been made drunk before he was brought before the magistrate. In his petition of appeal he omits the plea of drunkenness, and states that he acknowledged his guilt to the magistrate from awe of his presence. None of his pleas is supported by evidence. Five witnesses speak to recognizing him at the time of committing the dacoity, and upon *their* information he was apprehended at 10 A. M. of the morning of the

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Case of
KARTICK HAREE,
CHOWKEEDAR.

The confessions of the prisoner in the Mofussil and before the magistrate, although denied by him in the sessions court, were held to be satisfactorily proved.

1852.

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Case of
KARTICK HAR-
REK, CHOW-
KEEDAR.

dacoity, when he made a full confession, which he repeated the next day before the magistrate. His confessions have been duly proved. I see no reason to interfere with the conviction and sentence."

PRESENT :

A. J. M. MILLS, Esq., *Officiating Judge.*

GOVERNMENT

versus

RADHANAUTH RAOT.

1852.

August 6.

Case of
RADHANAUTH
RAOT.

The prison-
er's intent
having been
to get readier
credit to his
evidence, he
was convicted
of perjury.

CRIME CHARGED.—Perjury, in having, on the 21st May 1852, or 9th Jeyt 1259 B. S., deposed, under a solemn declaration taken instead of an oath, before the sessions judge of zillah Beerbhoom, that the prisoner Benec Raot is a collateral relation of his, and that the names of the said Benec Raot's father and his (Radhanauth Raot's) own father are the same, but that they are different persons, such deposition being false, and having been intentionally and deliberately made on a point material to the issue of the case.

CRIME ESTABLISHED.—Perjury.

Committing Officer, Mr. W. Ainslie, officiating magistrate of Beerbhoom.

Tried before Mr. R. B. Garrett, officiating sessions judge of Beerbhoom, on the 7th June 1852.

Remarks by the officiating sessions judge.—“The prisoner in this case was a witness for the defence, called by Benec Raot, prisoner No. 7, charged with dacoity attended with wounding, in the trial held in this court on the 13th, 14th, 15th, 19th, 20th, 21st and 22nd of May last. After being duly sworn, he stated that he was the son of Hurrie Raot, and a collateral relation of Benec Raot; that he had seen Benec Raot in his house, at the time the dacoity, with which Benec Raot stood charged, was committed. After his deposition in chief had been taken down, the prosecutor's *mookhtar* informed me that the witness (the present prisoner) was the brother of Benec Raot. On hearing this I duly and formally cautioned him, and reminded him of the solemn declaration he had made, and then put the question to him as to whether his father Hurrie Raot, and Hurrie Raot, the father of Benec Raot, were one and the same person or not; he deliberately answered that they were different persons, and not the same. Hurrie Raot, who happened to be outside the cutcherry, was called and acknowledged that Benec Raot and Radhanauth Raot were both his sons. I then forwarded the

witness to the magistrate with instructions that he should be committed for perjury.

"He confessed before the magistrate and before the court that he had stated what was false through fear that a brother's evidence would not be received in favor of a prisoner.

"The law officer convicted the prisoner of the crime charged in the calendar, and in concurrence therewith, I sentenced him to three (3) years' imprisonment with labor in irons."

Remarks by the Nizamut Adawlut.—(Present: Mr. A. J. M. Mills.)—"The prisoner has appealed. He pleads that he is an uninformed person, not acquainted with the law, and that he denied his relationship to the accused, on whose behalf he gave evidence, from fear of being himself taken up as the brother of a dacoit. His motive was undoubtedly (as he, indeed, admitted to the magistrate,) to get readier credit given to his evidence, and this species of false evidence amounts to perjury. I confirm the conviction and sentence."

PRESENT:

R. H. MYTTON, Esq., *Officiating Judge.*

GOVERNMENT

versus

NUSURDEE (No. 3), NUNDRAM PUTWAREE (No. 4, APPELLANT) AND KALEEDASS (No. 5, APPELLANT).

CRIME CHARGED.—1st count, arson; and 2nd count, riotously and illegally assembling for the purpose of committing a breach of the peace.

CRIME ESTABLISHED.—Riotously and illegally assembling for the purpose of committing a breach of the peace.

Committing Officer, Mr. A. G. Macdonald, magistrate of Rungpore.

Tried before Mr. T. Wyatt, sessions judge of Rungpore, on the 8th June 1852.

Remarks by the sessions judge.—"From the statement of the prosecutor on the part of Government, and the evidence adduced, it was proved that a quarrel having previously existed between two zemindars, *viz.*, Chytun Chunder Roy and Rum-money Mohun Chowdree, regarding some *chur* land, on the morning of Wednesday, the 19th November 1851, prisoner No. 3 (and others not yet apprehended), on the part of Rummoney Mohun, and prisoners Nos. 4 and 5 (and others absconded), on the part of Chytun Chunder, riotously assembled at the place where the dispute arose, for the purpose of cutting the crops of this *chur*, though no direct evidence was adduced as to one or

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Case of
RADHANAUTH
BIAOT.

1852.

August 6.

Case of
NUNDRAM
(appellant)
and others.

Charge.—
Riotous as-
semblage; sen-
tence of one
year's impris-
onment con-
firmed.

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Case of
NUNDRAM
(appellant)
and others.

other of these prisoners having set fire to the houses of certain *ryots* of each of these zemindars.

"In his defence, prisoner No. 3 denying the charges, alleged that he had merely gone to the spot where the dispute arose to cut his crops, when, on being opposed by the party of Chytun Chunder, zemindar, he, on remonstrating, was beaten, when he fled.

"Prisoners Nos. 4 and 5 stated that they were *ryots* of Chytun Chunder, pleading that they had been maliciously implicated by Rummoney Mohun, zemindar; that they were not present at the riotous assemblage in question, but were standing at a little distance off.

"Their witnesses support them in their pleas; but which are not credited against the preponderating evidence of the eye-witnesses on the part of the prosecution.

"The *futwa* found the prisoners guilty of the second count, punishable by *tazeer*, in which I concur."

Sentence passed by the lower court.—Each, one (1) year's imprisonment, without labor and irons.

Remarks by the Nizamut Adawlut.—(Present: Mr. R. H. Mytton.)—"The petition of appeal contains, as regards this case, nothing but a simple denial. The rest of it is made up of abuse of the opposite party, which is wholly irrelevant. No reason for interference is advanced or apparent. The appeal is rejected."

PRESENT:

R. H. MYTTON, Esq., *Officiating Judge*.

RADHOO KOONDOO

versus

MOORLEE MUTIAH.

1852.

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Case of
MOORLEE
MUTIAH.

Prisoner
convicted of
dacoity on
presumptive
proof. Sen-
tence confirm-
ed.

CRIME CHARGED.—1st count, going forth in a gang, armed with offensive weapons, on the night of the 30th December 1851, corresponding with the 16th Poos 1258, and attacking the house of the prosecutor with intent to commit dacoity; and 2nd count, belonging to a gang of dacoits.

CRIME ESTABLISHED.—Going forth in a gang armed with offensive weapons, and attacking the house of the prosecutor with intent to commit dacoity.

Committing Officer, Baboo Jogesh Chunder Ghose, deputy magistrate of Gurbettah, West Burdwan.

Tried before Mr. P. Taylor, sessions judge of West Burdwan, on the 6th May 1852.

Remarks by the sessions judge.—"The prosecutor and his son were awakened on the night of the 16th Poos, by an attack of

dacoits. The former fled, but the latter came out with a sword, and wounded (as he declares) two of them, one on the back, and another on the arm. By the blow given at the second robber, some arrows he held in his hands were divided, and their armed portions fell upon the ground. The dacoits fled, leaving a *lattee* behind them. They had no *mussals*, and not one was recognized. As soon as they were gone, the prosecutor and the witnesses Nos. 6, 7 and 8 came up and found no property removed, but the arrows and *lattee* lying on the ground, and some blood at a little distance from the house. This was followed up next day by the jemadar of the Telesair *pharee* to the village of Balsee, near Narainjee, of thanna Indoss, of the East Burdwan *ilaka*, that of which the prisoner is an inhabitant and chowkeedar. Notice was given to the thannadar by the same officer, when the mohurir, witness No. 1, was sent to make inquest at the prosecutor's house. This was done on the 18th Poos, in presence of witnesses Nos. 2, 3 and 4, and the mohurir then joined the jemadar in his pursuit of the wounded robbers. Both asked witness No. 9, the *foujdaree gomashtha* of the talook, whom he thought likely to have attempted the dacoity, when he mentioned various persons in the villages of Balsee and Narainjee. The chowkeedars, *seemanadars* and villagers were then called together, when it appeared that all were present except the prisoner, who was immediately sought for. His father Bungsee Mutiah subsequently informed the mohurir, that he had gone he knew not whither, in consequence of his having wounded him in the back with a *kooralee*, in a quarrel they had had about some rice. Upon this a hot search was commenced, which resulted in the prisoner's apprehension at Gurbettah, among some beggars at a *shradh* with a fresh wound on his back, the existence of which he explained in the same way as his father.

"The prisoner, who pleaded 'not guilty,' defended himself by repeating the *kooralee* story; but the evidence of the native doctor, witness No. 11, who examined the prisoner's wound a week after he received it, showed that it could not have been inflicted with that weapon, which weighed two seers, eleven chittacks, and was narrow-headed and blunt. The clean-cut nature of the gash, and the fact that the bone was not injured, showed that a much lighter and sharper weapon must have been made use of. The identity of the *kooralee* was duly acknowledged by the prisoner, whose story, which differed from that told by him at the thanna, was not supported by his witnesses, none of whom had seen the pretended quarrel, nor even the wound, before the prisoner had been captured by the police.

"Though full proof of the prisoner's guilt was not obtainable, the time and nature of his wound, as deposed to by the native doctor, the juncture at which he fled from his house, the place to which he fled as being that least likely to be searched by the

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police, the futility of his defence, the ignorance of the witnesses called by him, and the difference between his Mofussil and other depositions, induced so violent a presumption of his guilt, that I considered it my duty to convict him of the crime charged in the first count of the calendar, and sentence him as noted.

"The full penalty of dacoity was not inflicted, because no entrance appears to have been effected, and no property carried off.

"The neglect and absence of the village chowkeedar on the night of the dacoity had been overlooked by the deputy magistrate, who was directed to try him for the same. It was also pointed out, that the witnesses to a *sooruthal*, sent for examination to the sessions court, should be taken from among those whose names and signatures actually appear upon that document, which was not the case in this instance."

Sentence passed by the lower court.—Five (5) years' imprisonment, with labor in irons, two (2) years in lieu of stripes, and two (2) years more in consequence of his being a chowkeedar, altogether nine (9) years' imprisonment, with labor in irons.

Remarks by the Nizamut Adawlut.—(Present: Mr. R. H. Mytton.)—"The prisoner in his petition of appeal states, that his father gave him a push and that he fell on the *kooralee*. This is very different from his statements in the Mofussil, to the magistrate and to the sessions judge, and the variation tends to corroborate the presumptive proof against the prisoner. His appeal is rejected."

PRESENT:

A. J. M. MILLS, Esq., *Officiating Judge*.

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MAL (appellant,) and
others.

The appeal of the prisoners rejected, on the strength of their confessions before the magistrate and of the discovery of stolen property on some of them.

RAMDHUN BHUNDAREE .

versus

JUGA DOME CHOWKEEDAR (No. 2), RAMKANAE MAL (No. 3, APPELLANT), KAMOO DOME (No. 4, APPELLANT), KHETERNATH BAGDEE, CHOWKEEDAR (No. 5, APPELLANT), RAMDYAL BAGDEE, CHOWKEEDAR (No. 6, APPELLANT) AND JADOO MAL, CHOWKEEDAR (No. 7, APPELLANT).

*CRIME CHARGED.—1st count, dacoity in the prosecutor's house on the night of the 18th November 1851, or 3rd Aghun 1258, whence property valued at rupees 16-6-5 was plundered; 2nd count, accomplice in the above-mentioned dacoity; 3rd count, accessory before the fact to the above-mentioned dacoity; and 4th count, knowingly receiving property acquired by committing the above-mentioned dacoity.

CRIME ESTABLISHED.—Nos. 2, 3, 4 and 7 of dacoity, and Nos. 5 and 6, accessories to dacoity before the fact.

Committing Officer, Mr. G. A. Pepper, officiating magistrate of Beerbhoom.

Tried before Mr. R. B. Garrett, officiating sessions judge of Beerbhoom, on the 21st April 1852.

Remarks by the officiating sessions judge.—“ The prosecutor’s house was attacked by a gang of dacoits about midnight of 3rd Aghun, or 18th November 1851, and property valued at rupees 16-6-5 plundered. He himself was burnt in two places by lighted *mussals*. The darogah came to the spot early the next morning, and appears at first to have entertained an idea that the case was not a dacoity; but he was soon undeceived, and then lost no time in proceeding with the investigation.

“ The prosecutor recognized two of the dacoits, one of whom, Newal, *alias* Sreehuree Dome (since dead), confessed immediately he was taken into custody. He implicated others, who were in due course apprehended, including the prisoners now at the bar, who have confessed both in the Mofussil and before the magistrate. Several articles belonging to the prosecutor, forming part of the plundered property, were found in the possession of prisoners Nos. 1, 2, 3, 4 and 7.

“ The prisoner No. 1 died in the jail hospital on the 22nd March after the case was committed to the sessions.

“ The prisoners Nos. 2, 3 and 7 have confessed to having accompanied the gang to the house of the prosecutor, and there committed the dacoity.

“ Prisoners Nos. 4 and 6 have confessed to having gone forth with the gang to commit the dacoity, but that they left the party before the actual crime was perpetrated.

“ Prisoner No. 5 admits that he was invited to join the party for some purpose, but that when he saw the gang assembled he ran away.

“ In this court the prisoners plead ‘not guilty,’ and, with the exception of prisoner No. 6, rest their defence on the ill-treatment to which they state they were subjected by the police. The evidence adduced to substantiate this fact is, for the most part, untrustworthy, and no part of it at all favors the supposition that the confessions were extorted from parties innocent of the crime.

“ From the evidence adduced both on the part of the prosecution and for the defence, from the confessions of the prisoners, and from the fact of certain articles of the plundered property being found in the possession of four of them, and from the general circumstances of the case, I am perfectly satisfied in my own mind that the prisoners are the parties who committed this dacoity. The proof against them is sufficient, and therefore I have no hesitation in convicting prisoners Nos. 2, 3, 4 and 7 of dacoity, and prisoners Nos. 5 and 6, of being accessaries to

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lant) and
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ant,) and
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dacoity before the fact, and sentence prisoners Nos. 2 and 7, both being chowkeedars, to nine (9) years' imprisonment, and prisoners Nos. 3, 4, 5 and 6, the two last being also chowkeedars, to seven (7) years' imprisonment, all with labor in irons.

"In this case four out of the prisoners are chowkeedars, and amongst the witnesses for the defence there are no less than seven chowkeedars.

"The manner in which the confessions of the prisoners were recorded before the magistrate, Mr. F. A. E. Dalrymple, is very unsatisfactory, and had the evidence otherwise been less conclusive, might have been fatal to the conviction of the prisoners. Should Mr. Dalrymple return to the district, I shall not fail to draw his attention to the concluding para. of the court's remarks on the trial of Chooru Money Dass Byragee *versus* Gopal Dass and others, in the Nizamut Adawlut Reports for November 1851, page 1597.

Remarks by the Nizamut Adawlut.—(Present: Mr. A. J. M. Mills.)—"This is an appeal case. All the prisoners, but No. 2, have appealed, alleging that their confessions were extorted from them. There is some evidence, though, as remarked by the sessions judge, it is for the most part untrustworthy, that they were maltreated by the police; but setting aside their Mofussil confessions, their guilt is conclusively proved by their confessions before the magistrate, which have been fully established, and by the finding of several articles of the plundered property in the possession of the prisoners Nos. 3, 4 and 7. I see no reason to interfere with the sentence passed against the prisoners, which is accordingly affirmed."

PRESENT:

A. J. M. MILLS, Esq., *Officiating Judge.*

GOVERNMENT

versus

JEHANBUKSHI, SIRDAR CHOWKEEDAR.

CRIME CHARGED.—Severely wounding with a sword one Sona Mussulmanee, his wife, with intent to murder the said Sona Mussulmanee.

CRIME ESTABLISHED.—Severely wounding his wife with intent to murder her.

Committing Officer, Mr. C. F. Montresor, magistrate of Nuddea.

Tried before Mr. E. Bentall, additional sessions judge of Nuddea, on the 4th June 1852.

Remarks by the additional sessions judge.—“The prisoner had been irritated by being shut up and imprisoned by a neighbour, and came home in a bad humour, and saw a man called Moosdeen, of whom he had been jealous, with his wife: he therefore got his sword, and gave his wife four cuts with it, and he thought she was dead. He was apprehended by his brother in the presence of witnesses, and he made the above statement at the thanna, where he was taken by his brother immediately after the occurrence of the crime; and he made a similar statement two days afterwards before the magistrate, stating that he had intended to kill his wife. Before me he pleaded guilty of having wounded his wife, but not of the intention to murder her. She had four separate wounds, which must have been inflicted with as many blows. One was in front of the chest over the stomach, it was most severe, and it put her life into immediate danger. She had also a dangerous penetrating wound of considerable depth below and behind the right ear, as well as two other wounds, and they must have been inflicted with force. From the severity of the wounds, and the nature of the instrument with which they were inflicted, and the confessions of the prisoner, there can be no doubt about his intention to murder his wife.”

Sentence passed by the lower court.—Fourteen (14) years' imprisonment with labor and irons.

Remarks by the Nizamut Adawlut.—(Present: Mr. A. J. M. Mills.)—“The prisoner has appealed. His plea is that he had no intention of killing his wife. He struck her four blows with a most deadly weapon. This fact raises a conclusive presumption of his intent to kill.

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Case of
JEHAN-
BUKSHI, SIR-
DAR CHOW-
KEEDAR.

The prisoner convicted of wounding his wife with intent to kill her, and sentence, which the court remarked was a lenient one, affirmed.

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Case of
JAHAN-
BUKSH, SIR-
DAR CHOW-
KEEDAR.

“The imputation against his wife’s chastity, a girl of only fourteen years of age, is unsupported by evidence. I confirm the conviction and sentence (which is certainly a very lenient one) passed by the sessions judge.”

PRESENT:

SIR R. BARLOW, BART., *Judge.*

GOVERNMENT

versus

RAMSOONDER DUTT (No. 21), NOBINCHUNDER MOON-SHEE (No. 22), KISHENLOLL BUNDOPADHEA (No. 23), FURHATOOLLAH SHEIKH (No. 24), KUDDUM GHURAMEE (No. 25), BUDDUN SHEIKH (No. 26), SELLIM SHEIKH 1ST, (No. 27), BOODHYE SHEIKH (No. 28), AZEEM SHEIKH (No. 29), SELLIM SHEIKH 2ND, (No. 30), BHADOO SHEIKH (No. 31), ARZAN SHEIKH (No. 32), SOROOP SHEIKH (No. 33), US-SERMUDDIN SHEIKH (No. 34) AND MADHOO SHEIKH (No. 10).

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Case of
RAMSOONDER
DUTT and
others.

Certain of
the prisoners
were convict-
ed of riotous-
ly attacking
and plunder-
ing *ryots’*
houses.

The case of
one prisoner
postponed, for
evidence in
support of his
defence to be
heard.

A fine or
imprisonment
added to a
specific term
of imprison-
ment declared
to be an ille-
gal sentence.

CRIME CHARGED.—Being armed and riotously attacking and plundering the houses of *ryots* of Ryepore and Comurbaug of property valued at about rupees 1,600, in the presence of, and while resisting the authority of the police.

CRIME ESTABLISHED.—Riot and ordering the houses of *ryots* of Ryepore and Comurbaug to be plundered in the presence of the police.

Committing Officer, Mr. J. J. Ward, joint magistrate of Pubna, Rajshahye.

Tried before Mr. G. C. Cheap, sessions judge of Rajshahye, on the 6th April 1852.

Remarks by the sessions judge.—“This was a very heavy case, one hundred and seventeen witnesses being named in the two calendars, and the trial occupying more than four days. The outrage originated in a forcible attempt to *oust* a person from his farm, in a joint undivided estate, on the plea that the lessors had no share whatever, all that belonged to the family having been sold at a sheriff’s sale, and purchased by Mr. Kenny (I believe) of the Salgurmudooa indigo concern; and who again had leased his share or interest in the villages to the Hazleebut concern, belonging to Mr. Deverinne. From demonstrations for some days previous, the darogah was led to apprehend there would be a breach of the peace, and on his reporting to this effect to the joint magistrate, the only orders the latter issued were to prevent a *dungah*, and if there was one, to send in the

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others.

parties proved to have been concerned. No orders were issued warning the owners of the respective factories of Hazleebut and Salgurmudooa, under the charge of Messrs. Barton and Tripp, or to their head people. The consequence was, that though the mohurir of Coxsa was on the spot, a large body of some thirty coolies and *ghuramees*, carrying *chuppers* and the materials to erect a cutcherry, backed by about a hundred *latteals*, armed in the usual way, came to the village of Ryepore, when twenty men on the part of the farmer (a dependant of Ram Ruttun Baboo's) immediately left it. In the meantime the mohurir wrote to the darogah, informing him of what was going on. The latter then proceeded to the spot, and tried to persuade the prisoners Nos. 21 and 23 to desist; but they would not listen to him. Shortly after No. 22 arrived on an elephant, and, on his saluting the darogah, was asked to interfere, when he replied (laughing) 'what could he do, the orders had been issued by Khetur 'Mohunn Baboo.' In short the rioters, after thus setting the police totally at defiance (and who were helpless from the numbers opposed to them) separated, and began plundering the houses of the *ryots* in Ryepore and Comurbaug. The women in a body had previously fled to the river. The darogah wanted to give evidence himself of their being maltreated, and also to question others on the subject; but as this did not form a part of the charge, I would not allow the evidence to be recorded. There is, however, ample evidence to bring home the other charges to the prisoners. Against Nos. 21 and 23, as principals, in the first degree. No. 21 on the part of Mr. Tripp of Salgurmudooa factory, and No. 23 of the Hazleebut factory, close by, and within sight of the villages where the outrage was committed; and the *ryots* of which were, in fact, Mr. Barton's *ryots*, and instead of being protected were thus wantonly ill-treated by the farmer's head servants. No. 22 seems not to have arrived at first, or with the others, but that he was present, aiding and abetting in the outrages committed on the *ryots*, there can be no doubt whatever; and he apparently had some spite of his own to pay off or gratify, from the way he seems to have enjoyed the triumph obtained over Ram Ruttun and his servant, the farmer of the villages. The other twelve prisoners all reside at Omurpore, a village belonging to the trustees of Dwarkanath Tagore (also purchased at a sheriff's sale as the right of Situl Ghose), close adjoining to Ryepore and Comurbaug; and, being neighbours, should have been the last persons to have joined in the commission of such an outrage, but the hope of plunder or pay will induce men to do many things. Doubtless they had their reward, and none have got their punishment. With the exception of No. 10 (Madhoo Sheikh,) not one of the

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party arrested is a *latteal*; he was the only prisoner who set up any regular defence (an *alibi*) but which the moulvee rejected, and so did I, as he was named throughout by the police. Had the joint magistrate only proceeded to the spot *before* the commission of the outrage, instead of *after* it, none would have occurred. The darogah was not well supported, and when things came to extremities, seems to have been quite paralyzed by the conduct of the factory people, and could not even report what had occurred. The report, (a very fair one in my opinion, tallying with the darogah's evidence,) at the instance of Messrs. Barton and Tripp, was made by the darogah of Coxsa, and the foudaree nazir, from which I gather that of the parties whose houses had been plundered of all worth taking away, thirty-four had complained, and ten had run away and left the place, a common occurrence when such gross outrages are committed by Europeans, or by their servants. The evidence for the prosecution consists of three different parties, totally unconnected with each other, but whose statements tally, or agree as to the main facts; *first*, the police, including the darogah and mohurir of thanna Coxsa; *secondly*, several women, mostly widows, or *bustomees*, residing in the villages, and who, of course, had nothing to do with the factory; *thirdly*, the *ryots*, or inhabitants of the houses plundered. The whole of these were not examined, only such as appeared respectable, and therefore least likely to exaggerate, or depose falsely against the factory, out of revenge or grudge for some previous maltreatment, and the few questions put to these witnesses by the prisoners Nos. 21, 22 and 23 of itself shows they could not repel the evidence against them. Concurring therefore entirely with the moulvee in his *futwa*, who declares the three first prisoners principals, and punishable by *akoobut*, and the others, as accomplices, by *tazeer*, I have accordingly sentenced them as stated in the preceding column.

" After the *futwa* was given in, I went through the whole of the foudaree proceedings, or record connected with the case. The only excuse for Mr. Barton is, that he was not in his factory at the time, but what extraordinary powers had been left in the hands of his head people, or were exercised by them in this case. With regard to Mr. Tripp, as Mr. Barton's lease did not expire till the end of the Bengalee year, his interference, before the farm reverted to his employer (Mr. Kenny) was wholly unwarranted and manifestly illegal, and I doubt if Mr. Kenny himself would have thus set at defiance the authority of the police had he been at the factory. I was informed he had either then left, or was leaving, the country, and was, therefore, ignorant of Mr. Tripp's proceedings. I regret much to have to record

such misconduct on the part of Europeans and British subjects ; but *fat justitia ruat cælum.*"

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Sentence passed by the lower court.—Nos. 21 and 23, five (5) years' imprisonment, without labor, and a fine of rupees two hundred and fifty (250), or further imprisonment of two (2) years. Nos. 22, three (3) years' imprisonment, without labor, and a fine of rupees one hundred and fifty (150), or further imprisonment of one (1) year, and Nos. 24 to 34 and 10, three (3) years' imprisonment, without irons, and a fine of rupees one hundred (100) or labor.

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Case of
RAMSOONDER
DUTT and
others.

Remarks by the Nizamut Adawlut.—(Present : Sir R. Barlow, Bart.)—"The sessions judge's remarks in Statement No. 6 give a full detail of the circumstances under which the prisoners have been charged and convicted in this case ; it is unnecessary therefore to repeat them. All the prisoners but one have appealed against the sentence passed on them.

"The calendar contains the names of fifty eye-witnesses, most of whom were examined. I place but little reliance on the evidence of the police officers, whose neglectful conduct throughout the course of nearly three days, as they state, during which the villages Ryepore, &c., were being plundered, is evident, from the fact that no effectual attempt was made for the apprehension of the rioters. The darogah, the mohurir and some burkundauzes of two thannas were present during the whole time, and yet not a single offender was seized. The evidence, however, of numerous individuals, residents of Ryepore and Comurbaug, to whom the persons of the prisoners were familiar, recognized them at the time of the attack. Several of these witnesses' houses were plundered and the amount carried off is given. It is not, however, satisfactorily established that the large sum alleged to have been plundered was actually taken, but the amount is of minor importance ; it is sufficient that the evidence proves the plunder of the villages.

"The prisoners, as usual, save the prisoner No. 21, plead *alibi*, or endeavour to prove that though present they took no part in the riot. The evidence is most defective and unworthy of credit ; it was not believed by the sessions judge or the law officer below. The prisoners have been sentenced to various periods of imprisonment without labor and to fines of different amounts ; in default of payment, to further periods of imprisonment.

"The prisoner No. 21, Ramsoonder Dutt, has appealed against the orders of the sessions judge, who did not take any evidence in support of the defence set up. The sessions judge states, he considered it unnecessary. From the nature of the defence, which admits the prisoner was on the spot, it was absolutely necessary to examine closely into the allegations of the prisoner,

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others.

that he took no part in the riot. This was possible though he was present. The case must be returned to the sessions judge, with instructions to hear and decide upon the prisoner's defence after taking evidence in its support*.

"I see no reason to doubt the justness of the conviction of the other prisoners. One of them, Nobinchunder Moonshee, who appears through his vakeel, pleads that he has been convicted of an offence with which he was not charged. This is not so. The crime charged and the crime established, as recorded in columns nine and ten of the Statement, are essentially of the same nature though somewhat different in degree. Riotously attacking and plundering the *ryots'* houses and ordering the same; aiding and abetting, as the sessions judge in the remarks describes it, are manifestly the same offence.

Concurring in the conviction of the prisoners, I must now advert to the sentences passed upon them. The prisoners are sentenced first to imprisonment, then to fine, then to further imprisonment in default of payment. The precedent at page 130, volume III. of the Nizamut Reports, quoted by the sessions judge, does not bear out his order, nor does it apply to the case. By reference to the report it will be seen that the commissioner of Cuttack entertained a doubt whether he could, under Clause 7, Section II. Regulation LIII. of 1803, punish by sentence of a pecuniary *fine* to Government, *commutable*, if not paid, to a short *imprisonment*. In reply Messrs. Leycester and Turnbull decided that he was competent to dispose of it in the mode suggested by him. This judgment is in conformity with the provisions of Section III. Regulation XIV. of 1797, by which,

* *Extract from a letter, No. 732, dated 1st June 1852, from the Register of the Nizamut Adawlut, to the Sessions Judge of Rajshahye.*

"You are requested to state under what authority of law sentences for fines, with the alternative of further imprisonment, have been passed upon the prisoners Ramsoonder Dutt and others, Nos. 21 to 34, and No. 10, of Statement No. 6.

Extract from a letter, No. 34, dated 19th June 1852, from the Sessions Judge of Rajshahye, to the Register of the Nizamut Adawlut.

"With regard to the second paragraph of your letter directing me 'to state under what authority of law sentences for fines, with the alternative of further imprisonment, were passed upon the prisoners Ramsoonder Dutt and others,' I beg to state that they were sentenced under the law laid down in Clause 7, Section II. Regulation LIII. of 1803, as explained by the

* Construction 950, Circular Order 227, of Volume III.

† Nizamut Adawlut Reports, page 130.

Cohstruction and Circular Order of the Court noted in the margin*, and the precedent in the case of Anund Chunder Bannerjea† under which I have always acted, limiting, however, the imprisonment to 7 years, when a fine, in addition to imprisonment, has been imposed on any prisoner."

when a fine is imposed to the use of Government, 'the court shall fix a definite period of imprisonment to be held as equivalent to the fine, at the expiration of which the persons convicted shall be discharged, although they should have omitted to pay the fine.'

"Here is a sentence of *fine first, or imprisonment* in lieu.

"The sessions judge's order, however, entirely alters the law.

"He *first* imprisons for five (5) years; he *then adds* a fine, and in default of payment awards *further* imprisonment on each prisoner for various periods. I know of no law, nor am I aware of any precedent, which sanctions such sentences. I therefore amend the sessions judge's sentence, and remit so much as awards fine, and in default of payment a further period of imprisonment.

"The case of the prisoner No. 21, Ramsoonder, will be in abeyance, till the further inquiry called for shall have been received."

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PRESENT:

R. H. MYTTON, Esq., *Officiating Judge.*

TRIAL No. 1.—NOBINCHUNDER ROY CHOWDRY

versus

RAJOO BYRAGY, ALIAS RAJCHUNDER BYRAGY (No. 1), GUNGARAM JOOGY (No. 2), GOFOOROODEEN, ALIAS GUGUN, ALIAS MOOCHAY KOLOO, ALIAS MOOJDEEN SHEIKH (No. 3), DHURMEE COWRAH (No. 4), WAJID MUNDUL (No. 5), MOOCHEERAM COWRAH (No. 6), NIMCHAND COWRAH (No. 7), BUNMALLY BAGDY (No. 8), KASSEENATH BAGDY (No. 9), LUKHEENARAIN BAGDY (No. 10), GOPAL GOWALA (No. 11), MADHUB COWRAH (No. 12) AND RUTTON MANIK CHUNDAL (No. 13).

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Case of
RAJOO BYRAGY, alias RAJCHUNDER BYRAGY and others.

Trials Nos.
1 and 2.

Sentence of fourteen and seven years' imprisonment on prisoners convicted of dacoity, confirmed. The sirdars being shown to be notorious dacoits, might, with propriety, have been recommended for transportation for life.

TRIAL No. 2.—CHUNDER MADHUB CHUKERBUTTY

versus

GUNGARAM JOOGY (No. 1), SHEIKH SHAMCHUND (No. 2), SHEIKH JUMEER (No. 3), GOFOOROODEEN, ALIAS GUGUN, ALIAS MOOCHAY KOLOO, ALIAS MOOJDEEN SHEIKH (No. 4), LUKHEENARAIN BAGDY (No. 5), GOLAMY, ALIAS SHEIKH, GOLAU (No. 6), SHEIKH LALCHAND (No. 7) AND SHEIKH ABDOL (No. 8).

CRIME CHARGED.—TRIAL No. 1.—1st count, Nos. 1 to 13, dacoity in the house of the prosecutor's uncle, Jyenarain Roy

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Case of
RAJOO BYRA-
GY, *alias* RAJ-
CHUNDER BY-
RAGY and
others.

Chowdry, and plunder of property to the amount of rupees 196-12-0; 2nd count, accomplices in the above-mentioned dacoity; and 3rd count, Nos. 2 to 5, receiving portions of the above-mentioned property knowing it to have been plundered.

TRIAL No. 2.—1st count, Nos. 1 to 8, dacoity in the prosecutor's house, and plunder of property to the amount of rupees 201-1-6; 2nd count, accomplices in the above-mentioned dacoity; 3rd count, Nos. 2 to 4, receiving portions of the above-mentioned property knowing it to have been plundered.

CRIME ESTABLISHED.—TRIAL No. 1.—Accomplices in dacoity.—TRIAL No. 2.—Accomplices in dacoity.

Committing Officer, Mr. E. A. Samuells, magistrate of 24-Pergunnahs.

Tried before Mr. W. J. H. Money, sessions judge of 24-Pergunnahs, on the 15th and 25th May, respectively.

Remarks by the sessions judge.—TRIAL No. 1.—“The prosecutor, who lives in an adjoining house, and is nephew of the deceased owner of the house where the dacoity was committed, deposed to the fact of his uncle's house being attacked by about fifteen or sixteen dacoits at midnight of the 9th Phagoon last, who broke open boxes and *pataraks* and plundered property, consisting of gold and silver ornaments and clothes, to the amount of rupees 194, one of the dacoits applying a lighted torch to the cheek of one of the females, and another striking him, as he attempted to advance from his own premises. In the Mofussil, prisoners Gungaram Joogy, (No. 2,) Gofoorodeen, *alias* Gugun, *alias* Mochay Koloo, *alias* Mooldeen Sheikh, (No. 3,) Dhurmee Cowrah, (No. 4,) Wajid Mundul, (No. 5,) Moocheeram Cowrah, (No. 6,) Bunmally Bagdy, (No. 8,) Lukheenarain Bagdy, (No. 10) and Gopal Gowala, (No. 11,) admitted their being accomplices in the dacoity. Before the magistrate this admission was confined to Dhurmee Cowrah, (No. 4,) Moocheeram Cowrah, (No. 6,) Nimchand Cowrah, (No. 7,) Bunmally Bagdy (No. 8,) Kasseenath Bagdy, (No. 9,) Luckheenarain Bagdy, (No. 10,) and Gopal Gowala, (No. 11). Before this court all the prisoners denied the charges on which they were arraigned. It appears that on the night of the dacoity witness No. 49, Tameezoody Burkundauz was going his rounds and heard of what had occurred. He gave information to the police out-post at Neelgunge; when at his suggestion the jemadar and himself proceeded to the house of prisoner No. 1, Rajoo, a notorious dacoit, and other parties were despatched to the houses of prisoners Gungaram Joogy, (No. 2) and Rutton Chundal, (No. 13). Rajoo was absent, and while the police were on the watch, prisoners Moocheeram Cowrah, (No. 6,) Bunmally Bagdy, (No. 8,) and Gopal Gowala, (No. 11,) were seized on attempting to enter the house, a fourth man, Lukheenarain Bagdy, (No. 10,) escaping. Prisoner No. 11, Gopal Gowala, upon whom spear heads were found, confessed that they

were returning from the dacoity in the prosecutor's relative's premises, and mentioned his accomplices. Witness No. 1, Gobind Cowrah, and witness No. 2, Bissonath Cowrah, who were admitted approvers by the magistrate, identified the prisoners as being concerned in the dacoity, the house of prisoner No. 1 being the starting point, the former witness omitting prisoners Nos. 9 and 10 in this court. The prosecutor's statement as to the fact of the dacoity was corroborated by witness No. 3, Goluck Doss, who was the only male residing on the premises, and by witness No. 4, Jadub Doss, and witness No. 5, Bissonath Doss, neighbours. Witnesses deposed to the discovery of part of the plundered property in the possession of prisoners Gungaram Joogy, (No. 2,) Gofoorodeen, *alias* Gugun, *alias* Moochay Koloo, *alias* Moojdeen Sheikh, (No. 3,) Dhurme Cowrah, (No. 4) and Wajid Mundul, (No. 5); and also to the recognition,—witness No. 45, Bassodeb Ghose, pointing out what he had pledged and what he had sold to the inmates of the house. Prisoners Rajoo, (No. 1,) Lukheenarain Bagdy, (No. 10) and Rutton Chundal, (No. 13) were proved to have been absent from their houses on the night of the dacoity, and witnesses deposed to the bad character of the prisoners Rajoo, (No. 1,) Gungaram Joogy, (No. 2,) Gofoorodeen, *alias* Gugun, *alias* Moochay Koloo, *alias* Moojdeen Sheikh, (No. 3,) Lukheenarain Bagdy, (No. 10) and Rutton Chundal, (No. 13.) Prisoner No. 1, Rajoo Byragy, did not require his witnesses, but declared he and Jumshere Jemadar were on bad terms. Prisoner No. 2, Gungaram Joogy, had no witnesses. Prisoner No. 3, Gofoorodeen, *alias* Gugun, *alias* Moochay Koloo, *alias* Moojdeen Sheikh, cited witnesses to prove that he was at the Patoolllea cutcherry on the night of the dacoity. Prisoner No. 4, Dhurme Cowrah, pleaded *alibi* at his own house. Prisoner No. 5, Wajid Mundul, pleaded to the same purport. Prisoner No. 6, Moocheeram Cowrah, and prisoner No. 7, Nimchand Cowrah, declared they were tutored by the jemadar, and did not require their witnesses. Prisoner No. 9, Kasseenath Bagdy, declared he was deceived by the jemadar, and did not want his witnesses. Prisoner No. 10, Lukheenarain Bagdy, pleaded an *alibi* at his own house on the night of the dacoity. Prisoner No. 11, Gopal Gowala, pleaded an *alibi*, and did not require his witnesses. Prisoner No. 12, Madhub Cowrah, also pleaded an *alibi* at his own house, and declared there was enmity between him and Gobind, witness, and the other prisoners. Nothing was elicited from the evidence of the witnesses for the defence calculated to impugn the evidence for the prosecution. I considered all the prisoners guilty of being accomplices in dacoity. As prisoners Gungaram Joogy, (No. 2,) Gofoorodeen, *alias* Gugun, *alias* Moochay Koloo, *alias* Moojdeen Sheikh, (No. 3,) and Lukheenarain Bagdy, (No. 10,) were committed in another case, sentence upon

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them was reserved. The other prisoners were sentenced to imprisonment; and as prisoners Rajbo Byragy, (No. 1), and Rutton Chundal, (No. 13), were notorious dacoits, I awarded to them a severer degree of punishment."

TRIAL No. 2.—"The prosecutor deposed to his house being attacked on the night of the 8th Poos last, an hour after midnight by about ten or twelve dacoits, who broke open his boxes and plundered property, consisting of jewels and clothes, valued at rupees 200, one of the dacoits snatching the ornaments from his wife's person. The prisoners denied the charges on which they were arraigned in this court. In the Mofussil prisoners Sheikh Shamchund, (No. 2,) Jumeer, (No. 3,) Lukheenarain Bagdy, (No. 5,) Golamy, *alias* Sheikh Golaup, (No. 6,) Lallehand, (No. 7) and Sheikh Abdool, (No. 8,) admitted their being accomplices in the dacoity. Before the magistrate the admission of prisoner No. 5, Lukheenarain Bagdy, was to the same purport. Prisoner No. 2, Gungaram Joogy, in the previous dacoity case, admitted his privity to *this* dacoity after the occurrence. He was named also here in the confession of other prisoners. Prisoner No. 4, Gofoorodeen, *alias* Gugun, *alias* Mochay Koloo, *alias* Mochdeen Sheikh, in the previous dacoity case, admitted his being concerned in this dacoity case. He was named also in the confession of other prisoners in this case. No clue appears to have been obtained to this dacoity until the prisoner No. 5, Lukheenarain Bagdy, in the previous dacoity case, confessed also to *this* case. The prosecutor was then sent for, and recognized the silver chain which had been found on the person of prisoner No. 4, Gofoorodeen, *alias* Gugun *alias* Mochay Koloo, *alias* Mochdeen Sheikh; the confession of prisoner No. 5, Lukheenarain Bagdy, leading to the apprehension of the other prisoners in this case. Witness No. 1, Sreekant Dome, who was admitted an approver by the magistrate, deposed to the prisoners as being concerned in the dacoity. Witness No. 2, Issanchunder Holdar, a servant of the prosecutor, and residing in his house, and witness No. 3, Roopchand Mundul, and witness No. 4, Bipro Doss Mundul, neighbours, corroborated the prosecutor's statement as to the fact of the dacoity. Witnesses deposed to the discovery of part of the plundered property in the possession of prisoners Sheikh Shamchund, (No. 2,) Sheikh Jumeer (No. 3) and Gofoorodeen, *alias* Gugun, *alias* Mochay Koloo, *alias* Mochdeen Sheikh, (No. 4,) which was recognized as belonging to the prosecutor, the silver chain having been pledged by witness No. 24, Suroopchunder Hawallee, who certified to that effect. Prisoner No. 1, Gungaram Joogy, declared that Lukheenarain Bagdy, (No. 5,) had a spite against him, but did not require his witnesses. Prisoner No. 2, Sheikh Shamchund, cited witnesses to prove that the property found with him was

his own. Prisoner No. 3, Sheikh Jumeer, complained of having been ill-treated, but did not require his witnesses examined, who were in attendance. Prisoner No. 4, Gofoorodeen, *alias* Gugun, *alias* Moochay Koloo, *alias* Moojdeen Sheikh, did not want his witnesses examined, but declared that the prosecutor and his own landlord had a dispute about rent. Prisoner No. 5, Lukheenarain Bagdy, did not require his witnesses examined, who were in attendance, and had been cited to prove an *alibi*. Prisoner No. 6, Golamy, *alias* Golaup, cited witnesses to prove his sickness the latter end of Aghun and the whole of the month of Poos, and declared he had a quarrel with Madhub Chunder Dey, No. 12, and Sreekant Dome, No. 1, witnesses in his case. Prisoner No. 7, Sheikh Lallehand, cited witnesses to prove an *alibi*, and declares he was ill-treated by the police. Prisoner No. 8, Sheikh Abdool, cited witnesses to prove his sickness the whole of the month of Poos, and declared he had a quarrel with Madhub Chunder Dey, No. 12, and Sreekant Dome, No. 1, witnesses in this case. Nothing was elicited from the evidence adduced by the prisoners in their favor. I considered prisoners Gungaram Joogy, (No. 1,) Gofoorodeen, *alias* Gugun, *alias* Moochay Koloo, *alias* Moojdeen Sheikh, (No. 4,) and Lukheenarain Bagdy, (No. 5,) guilty in this and the previous case of being accomplices in dacoity. Prisoners Sheikh Shamechund, (No. 2,) Sheikh Jumeer, (No. 3,) Golamy, *alias* Sheikh Golaup, (No. 6,) Sheikh Lallehand, (No. 7,) and Sheikh Abdool, (No. 8,) I also considered guilty of being accomplices in dacoity in this case, and sentenced them accordingly, awarding a severer degree of punishment to Gofoorodeen, *alias* Gugun, *alias* Moochay Koloo, *alias* Moojdeen Sheikh, (No. 4,) and Lukheenarain Bagdy, (No. 5,) as being notorious dacoits."

Sentence passed by the lower court.—TRIAL No. 1.—Nos. 1, 3, 10 and 13, each, fourteen (14) years' imprisonment, with labor in irons, in banishment, being, *in respect of* Nos. 3 and 10, a consolidated sentence for two offences, *vide* Trial No. 2, prisoners Nos. 4 and 5, and Nos. 2, 4 to 9, 11 and 12, each, ten (10) years' imprisonment, with labor in irons, being, *in respect of* No. 2, a consolidated sentence for two offences, *vide* Trial No. 2, prisoner No. 1. TRIAL No. 2.—No. 1, ten (10) years' imprisonment, with labor in irons, being a consolidated sentence for two offences, *vide* Trial No. 1, prisoner No. 2. Nos. 2, 3, 6, 7 and 8, each, seven (7) years' imprisonment, with labor and irons, and Nos. 4 and 5, each, fourteen (14) years' imprisonment, with labor in irons, in banishment, being a consolidated sentence for two offences, *vide* Trial No. 1, prisoners Nos. 3 and 10.

Remarks by the Nizamut Adawlut.—(Present: Mr. R. H. Mytton.)—TRIAL No. 1.—"The prisoners in this case have

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urged nothing to impugn the propriety of the conviction, in support of which there is very full and satisfactory proof. Their appeal is therefore rejected.

"The sirdars in this and the succeeding case being shown to be notorious dacoits, might, with great propriety, have been recommended to be transported for life."

TRIAL No. 2.—"The remarks on the preceding case apply to this. The appeal is rejected."

PRESENT :

W. B. JACKSON, Esq., *Judge*.

GOONEE JHA

versus

MOOSOOREE SAHOO.

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Case of
MOOSOOREE
SAHOO.

Conviction
and sentence
affirmed on
appeal.

CRIME CHARGED.—Riot with severe wounding.

CRIME ESTABLISHED.—Riot with severe wounding.

Committing Officer, Mr. R. O. Heywood, officiating magistrate of Bhaugulpore.

Tried before Mr. R. N. Farquharson, sessions judge of Bhaugulpore, on the 8th April 1852.

Remarks by the sessions judge.—"The prisoner pleads 'not guilty.'

"The case is the same as that immediately preceding.* Witness No. 1 confidently identifies the prisoner as being one of the armed crowd who inflicted wounds on the three prosecutors; witness No. 3 died last night of cholera, his evidence given before the magistrate has been sworn to before me by Gopal Lall, mohurir, who wrote it down; it is the same as that of No. 1. Witness No. 2 is ill and cannot attend, witness No. 4 deposes to prisoner's apprehension.

"Prisoner pleads an *alibi*. Witnesses for the defence endeavour to uphold this *alibi*, but they are all servants or dependents of Teloke Chand Sahoo and their depositions worthy of little confidence.

"The jury find the prisoner guilty of the charge brought against him, in which finding I fully concur, and sentence him accordingly to seven (7) years' imprisonment with labor and irons, (*vide* remarks in case immediately preceding.)"

Remarks by the Nizamut Adawlut.—(Present: Mr. W. B. Jackson.)—"I see no reason to interfere with the sentence passed on Moosooree Sahoo; orders have been already passed regarding the other men whose names are in this petition."

* Case of Bindabun Surma, *vide* Reports for July 1852, p. 146.

PRESENT :

SIR R. BARLOW, BART., *Judge.*

GOVERNMENT

versus

PELARAM (No. 2), BUCKTAR, ALIAS BUGEFAH CHOW-
KEEDAR (No. 3), RAMDOOLAL KOOLAL (No. 4),
LUCKUN KOOLAL (No. 5) AND ARADHUN (No. 7).

CRIME CHARGED.—No. 2, wilful murder of Rambullub ; No. 3, 1st count, being an accessary after the fact ; 2nd count, concealing the fact of the case, he being the police chowkeedar of the *mohulla* in which the crime was committed ; and 3rd count, bribery, he having taken Company's rupees 6, for the purpose of concealing the real facts of the case and not reporting the same at the *thanna* ; Nos. 4, 5 and 7, 1st count, privity to the murder ; and 2nd count, being accessaries after the fact.

Committing Officer, Mr. J. R. Muspratt, magistrate of Chittagong.

Tried before Mr. A. Forbes, officiating additional sessions judge of Chittagong, on the 10th of July 1852.

Remarks by the officiating additional sessions judge.—“ The evidence of witnesses Nos. 1, 2, 3, 4, 5 and 6 prove that prisoners Nos. 7, 8 and 9 (acquitted) of the calendar (who are sons of the deceased) assaulted prisoner No. 2 (who is a nephew of the deceased) late in the evening of the 30th April 1852, two of the sons of the deceased holding prisoner No. 2, whilst the third son continued to stick him with the second joint of the fingers of his clenched hand until some of the witnesses above referred to released prisoner No. 2.

“The moment prisoner No. 2 was released from the hands of his assailants, he rushed to his house, and got a thick stick, with which he pursued his cousins, who, when he was thus armed, were afraid to face him, and ran away. The deceased, Rambullub, hearing the affray, came out of his house, with the intention of appeasing it, as some say ; but on confronting prisoner No. 2 he made use of language more calculated to excite than to pacify his already-excited and angry feelings ; and prisoner No. 2, under the influence of sudden anger, struck the deceased one unfortunate blow with the *lattee* he had in his hand, and killed him. All the witnesses, among whom is Anundo, daughter of the deceased, agree in stating that only one blow was struck ; and no witness has deposed to a single fact to show that prisoner No. 2 was actuated by a feeling of ill-will or malice towards the deceased.

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The Nizamut Adawlut concurred with the sessions judge, in convicting the prisoner of culpable homicide of a minor nature, in dissent from the *zillah* law officer, whose verdict was wilful murder.

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"Death followed the blow almost immediately; and the evidence of the witnesses already referred to prove that prisoner No. 7, the eldest son of the deceased, went without delay and called the village chowkeedar, prisoner No. 3. The chowkeedar, instead of proceeding to the thanna, which is not more than half an hour's walk from the spot, called a *salis* to settle the matter; and after a consultation that lasted during the whole night, it was arranged by the *salis* of prisoners Nos. 4 and 5 that prisoner No. 2 should pay to the sons of the deceased rupees 50, to defray the expenses of the deceased's *shradh*. Prisoner No. 2 had not so much money; and he begged prisoner No. 5 to take all the property he had, and to guarantee the payment of the money. After some entreaty prisoner No. 5 consented to the proposal; and also to guarantee the payment of all sums that the parties might be held responsible for if the matter came to the knowledge of the police. The matter having been thus settled, the chowkeedar demanded rupees 20, and finally received rupees 6 in consideration of the part he has taken in hushing up the crime. Early on the following morning the body was burnt.

"Witness No. 23 heard of the homicide the following day from prisoner No. 6, and gave information to the police.

"The law officer acquits prisoners Nos. 6, 8, 9, 10 and 11, in which verdict I concur. The evidence is insufficient to prove that prisoner No. 6 sat as one of the *salis* to compound this homicide; and there is only Ameer Alee's word against him, that he did not send Ameer Alee to the thanna; or that prisoners Nos. 8 and 9, the former of whom is twenty, and the latter only sixteen years of age, did by any act consent to the receipt of the award of the *salis*, or that prisoner Nos. 10 and 11 took an active and leading part in burning the body of deceased.

"The law officer convicts prisoner No. 2 of the wilful murder of the deceased, determining the degree of his guilt by the description of the instrument with which the blow that occasioned death was inflicted. He convicts prisoner No. 3 of concealing the crime, and of taking a bribe of rupees 6; and prisoners Nos. 4, 5 and 7 of concealing the crime. He acquits them of privity to the murder, as it was committed suddenly and without premeditation.

"The verdict of the law officer with reference to prisoner No. 2 should, in my opinion, be set aside.

"Under circumstances of very great provocation, prisoner No. 2 armed himself with the first stick he could lay hold of, in order to frighten or chastise three stout young men who had just attacked him in a most cowardly manner, two of them holding him by the hair of his head whilst the third struck him in the body with his clenched hand. The father of these three men then rushed out of his house, up to this angry man, thus

armed; and instead of attempting to soothe, he still further excited his angry feelings by the use of abusive and irritating language. One blow follows which unfortunately and unhappily occasions death. The sons of the deceased were still close at hand, and the language and bearing of the deceased might have well induced prisoner No. 2 to think that he still stood in danger of a renewed assault by the sons reinforced by the father.

"The stick though not bound with iron is heavy, weighing upwards of eighty *tolahs*. It is three feet ten inches in length and one inch and a half in diameter.

"Great discrepancy will be observed in the opinion of witnesses regarding the age of the deceased, some stating that he was forty years of age, and others eighty years; and his age may be considered of importance. He appears to have been a man far advanced in years but still capable of field labor.

"The crime of prisoner No. 2, from the absence of all malice and premeditation, and from the great provocation for the sudden anger, under the influence of which the blow was struck, does not appear to call for severe punishment; and I recommend six (6) months' imprisonment without labor from the date of the prisoner's confession to the magistrate.

"There can be no doubt that prisoner No. 3, being at the time the chowkeedar of the division in which the homicide was committed, did, from a corrupt motive, instigate and connive at the concealment of this crime; and that he did actually receive rupees 6 as a payment for his connivance. It is rarely corruption and connivance are so clearly proved, and a more bare-faced attempt at concealment from purely corrupt motives I have never met with. I recommend a sentence of two (2) years' imprisonment with labor, commutable to a fine of rupees twenty-four (24) if paid within one month.

"Under the English law, prisoners Nos. 4, 5 and 7 would probably be convicted of being accessaries after the fact, as undoubtedly they assisted prisoner No. 2, in order that he might escape justice. Their guilt, however, is attended with no aggravating circumstances. The length of time the *salis* or *punchayet* sat shows that prisoner No. 7 consented to conceal the death of his father from the police with great reluctance, whilst his first spontaneous act was to call the village chowkeedar and inform the police. There is no evidence to show that prisoners Nos. 4 and 5 were actuated by wicked motives. Their crime appears rather to have arisen in a too ready compliance with the mandate of the chowkeedar, and in too readily giving way to the feeling of compassion for a neighbour who had committed a crime under the influence of sudden anger. There is no reason to suppose that they 'sought' to derive any gain, or individual advantage by hushing up the crime. The guarantee, however, demanded by

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prisoner No. 7, and given by No. 5, of indemnity in the event of the police discovering the crime, proves that they knowingly assisted in compounding it in defiance of the law, and I cannot recommend a more lenient sentence than I have proposed to be passed on prisoner No. 2."

Remarks by the Nizamut Adawlut.—(Present: Sir R. Barlow, Bart.)—"This is a reference in regard to the prisoner No. 2, arising out of a difference between the officiating additional sessions judge and the law officer, who convicts the prisoner of wilful murder, whilst the judge, from the absence of all malice and premeditation, and from the great provocation which the prisoner received, considers his offence one of comparatively a minor nature, and would sentence the prisoner to six (6) months, without labor, from the date of the prisoner's confession before the magistrate. I concur with the sessions judge in awarding sentence of six (6) months, but it must commence from the date of the sessions judge's conviction."

PRESENT:

R. H. MYTTON, Esq., *Officiating Judge.*

DEENOOBUNDHOO SHIHA

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Case of
BEHAREE,
CHOWKEEDAR and another.

BEHAREE, CHOWKEEDAR (No. 9) AND BINDRABUN DASS, ALIAS BENODE DASS (No. 10).

CRIME CHARGED.—1st count, dacoity in the prosecutor's house; 2nd count, having given property to the prisoner Beharee for the purpose of concealing it, knowing the same to have been acquired by dacoity.

CRIME ESTABLISHED.—Having given property to Beharee, knowing the same to have been acquired by dacoity.

Committing Officer, Mr. C. F. Carnac, officiating magistrate of Moorshedabad.

Tried before Mr. D. I. Money, sessions judge of Moorshedabad, on the 21st April 1852.

Remarks by the sessions judge.—"On the 26th November 1851, a dacoity was committed in the prosecutor's house from which property to the value of rupees 802-14-0 was plundered. The darogah of thauna Gowas, in whose jurisdiction the dacoity was committed, was unable to trace the plundered property or the dacoits. On the 13th March last, the darogah of thauna Hurreeparah took up the prisoner Beharee, Chowkeedar, on the statement of Rohomonee Sheikh Dagee. Beharee produced from a jungle, where they had been concealed, one quarter of a mile from his house, a shield and sword, stating that they had

Sentence of five years' imprisonment, for having had in possession plundered property, confirmed. The sentence upon one prisoner, who at a time subsequent to the property coming into his possession, concealed it, but produced it on demand, reduced to one year's imprisonment.

been given to him by the prisoner Benode, and that subsequently, knowing the property to have been acquired by dacoity, he went to return them to him, but he refused to take them back, and they were concealed by him and the prisoner Benode in the jungle where they were found. The darogah immediately apprehended the prisoner Benode and sent both of them to the magistrate.

“That Benode gave the property to Beharee was proved by the evidence of the witnesses in the foudaree court, and although the prisoner Beharee in his defence in this court stated that at the marriage procession of Ramsoonder and Beekaree, the prisoner Benode gave him the shield and sword, which was proved by three of the witnesses, but that he did not know that the property had been acquired by dacoity, yet from the fact of his having concealed the property and produced it from the jungle before the darogah during the investigation, such a statement cannot be believed. Again the statements of the prisoner Beharee, at the thanna foudaree and this court about the concealment of the property, are contradictory of each other. Contrary to his Mofussil statement, he stated in this court that the prisoner Benode had concealed the property and he saw it, but it has been clearly proved, by the evidence of three of the witnesses, *viz.*, Kheternaauth and others, that Benode gave the property to Beharee, and although the prisoner Benode denied it, yet there are no satisfactory proofs in his defence to invalidate the evidence of those witnesses. It is also proved that the shield and sword belong to the prosecutor and were included in the list of property he drew out. Under these circumstances there is no doubt of the prisoner's guilt, and I convicted the prisoner Beharee of having received and possessed property knowing the same to have been acquired by dacoity, and the prisoner Benode of having given the property to Beharee, knowing the same to have been acquired by dacoity, and sentenced them as stated in the proper column.”

Sentence passed by the lower court.—Five (5) years' imprisonment each with labor and irons.

Remarks by the Nizamut Adawlut.—(Present: Mr. R. H. Mytton).—“It is proved that Bindrabun, *alias* Benode, gave a sword and shield to Beharee to use on the occasion of a wedding, and that sword and shield have been proved to have been taken by dacoity. His denial of the giving to Beharee, and refusal to explain where and how he got them, afford presumption that he knew they were acquired by dacoity. I therefore see no reason to interfere with the sentence against him.

“Beharee has not appealed, but his case is deserving of notice. It is proved by the witnesses that his father lent his

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sword and shield on the occasion of the wedding in question to another person, and prisoner, remarked.—‘What am I to do for ‘a sword and shield?’ on which Benode gave him the one in question; subsequently he heard that suspicion of their being plundered property was attached to them, and he first asked Benode to take them back, and on his refusing to do so, he put them into the jungle, but produced them on demand to the darogah. His fault is that he did this, instead of delivering them up to the police. It is not one deserving of the severe sentence passed. His period of imprisonment is reduced to one year.”

PRESENT:

R. H. MYTTON, Esq., *Officiating Judge.*

TOFER ALEE

versus

SHOIKEA, ALIAS SHOOKER ALEE.

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Case of
SHOIKEA, *alias*
SHOOKER
ALEE.

Sentence of
seven years’
imprisonment
on an old of-
fender for
burglary, con-
firmed.

CRIME CHARGED.—Burglary in the house of Tofer Alee on the night of the 22nd February 1852, and theft of property valued at rupees 19-13-0.

CRIME ESTABLISHED.—Burglary in the house of Tofer Alee, on the night of the 22nd February 1852, and theft of property valued at rupees 19-13-0.

Committing Officer, Mr. F. B. Simson, officiating magistrate of Chittagong.

Tried before Mr. S. Bowring, officiating sessions judge of Chittagong, on the 14th April 1852.

Remarks by the officiating sessions judge.—“The prosecutor stated that he was asleep in his hut when he was awakened by some person whom he immediately seized and brought outside, and whom he then discovered to be the prisoner. Persons assembled on the alarm being given and the house was found to have been broken into and robbed, and some of the property found near the spot.

“Several witnesses, who assembled on the alarm being given, corroborated the above testimony.

“The prisoner confessed at the thanna. Before the magistrate he said he had gone to the prosecutor’s house for water, and in this court that he was passing on his way to the moonsiff’s cutcherry when he was apprehended; he called two witnesses, who established nothing in his favor.

“The prisoner was imprisoned twice before, once for burglary and once on default of security as of bad character, though he says he holds as *ryot* nine *kunees* of land.”

Sentence passed by the lower court.—To be imprisoned with labor and irons for the period of seven (7) years.

Remarks by the Nizamut Adawlut.—(Present: Mr. R. H. Mytton.)—"I see no reason to interfere with the sentence in this case."

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Case of
SHOIKKA, alias
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ALEE.

PRESENT:

SIR R. BARLOW, BART., Judge.

DOWLUT SINGH RAJPOOT

versus

HURKHOO GWALAH.

CRIME CHARGED.—1st count, wilful murder of Roopnath Singh; 2nd count, beating the deceased with intent to murder him.

Committing Officer, Mr. F. C. Fowle, magistrate of Behar.

Tried, before Mr. T. Sandys, sessions judge of Behar, on the 29th of May 1852.

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The prisoner convicted of aiding and abetting in murder, sentenced to transportation for life.

Remarks by the sessions judge.—"The deceased was a respectable Rajpoot, resident of Teesee-bar-khoord, situated in a wild part of the country, where he held leases, and, amongst others, that of Dhajabar, a patch of cultivation of upwards of one hundred beegahs, located on the skirts of the jungle, and distant above a mile from his own village. Boodhun Rajwar, (witness No. 1,) was the watchman of this solitary spot. On the afternoon of the 23rd March last, the deceased left home alone to make his rounds. During the evening Boodhun Rajwar brought information to the prosecutor, the deceased's son, that the deceased had seized the prisoner's cattle in the act of grazing the Dhajabar crops, which brought on an altercation between the deceased and the prisoner, in which the latter, and as first stated assisted by others, had beaten the deceased to death. The prosecutor, accompanied by a few others, proceeded at once to Dhajabar, but returned without having found any traces of the deceased beyond his stick, a slight switch, (No. 3,) weighing three *runna*, said to have been then picked up within the Dhajabar fields. The search was again renewed by a large party the next day, Wednesday, the 24th idem, but without success, and again continued the following day, Thursday, the 25th, by a larger party, when the deceased's body was at last found amongst the hills in a dense jungle, upwards of two miles distant from, and yet extending to, Dhajabar, showing unmistakable external marks of having come to his death by foul violence. The prosecutor and Boodhun Doosad, chowkeedar, (witness No. 15), proceeded at once to Feykun Khan, jemadar at the police station of Munjeeawah, with information of what had

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thus happened. The jemadar reached the spot the next day, the 26th idem, and held the ordinary inquest on the body, which, after such a lapse of time, was necessarily in too decomposed a state to admit of its being forwarded for surgical examination. It describes six external marks of violence, but only two of them of a mortal character requiring particular notice: one between the nose and forehead, and another (No. 3,) bruise on the wind-pipe, as if from strangulation by *luttee* pressure. In the *interim* the prisoner had been following his usual occupation, for, according to the prosecutor before this court, he went to the prisoner's house the night of the occurrence, and charged him with it, though this is at variance with his information before the police, which declares that the prisoner was not forthcoming when the others, first accused, were. On the discovery of the deceased's body, the prisoner appears to have been at once apprehended by one Boothoo, a chowkeedar of the neighbourhood, and was at least found in attendance on the jemadar's arrival, before whom, the following day, he confessed having beaten the deceased to death, and thrown his body where it was found, in corroboration of which, in presence of the witnesses Nos. 2 to 6, he produced the deceased's double sheet and turban from under a heap of leaves in a water-course in the jungle, near the Dula village, some two miles distant from the place where the body had been discovered. His confession before the magistrate, on 1st April following, confirmed the one he had given before the police, both of which may be summed up as follows:—That the deceased had found his cattle grazing, on which, notwithstanding his remonstrances, the deceased maltreated him, of which he pretended to show marks, and in the irritation of the moment he struck the deceased in return with the slight stick (No. 4,) repeatedly, so that he died on the spot. He declared that no one had aided him in the act itself, and before the police replied, that he cast the body away where it was found, out of fright, and without any one's aid or assistance. He has never called any witnesses. Before this court he at first pleaded guilty to the charge of 'wilful murder of the deceased;' but when subsequently called on for his defence,—several days intervening for the attendance of the jemadar Feykun Khan,—he then declared his confessions had been made at the jemadar's instigation, and without attempting to account for the deceased's death in any manner whatsoever, confined his defence to the assertion of the accusation being made, and the case got up against him on bare suspicion, owing to his head having been grazed by a buffalo's horn.

"There is only one eye-witness of the fact, the watchman Boodhun, (witness No. 1,) although witnesses Nos. 12, 13 and 14, graziers like the prisoner, but residents of different villages, and at first suspected of having aided him, proffer disconnected testi-

mony of having observed the altercation between the prisoner and the deceased, each passing on separately without waiting to see the issue, cunningly excusing themselves for not having done so, either through fear of their own cattle getting into like trouble, or hurrying homewards through fear of rain, which, as stated by others, appears to have fallen during the night. The evidence of the remaining witnesses, Nos. 2 to 10 inclusive, confirms the general facts of the case as already narrated. Kishnath (witness No. 11,) a dhobee, recognized the deceased's clothes as delivered up by the prisoner. Witnesses Nos. 16 to 18 are mere hearsay witnesses, whose testimony might have been dispensed with.

“ Muddoo, the prisoner's brother, was arrested by the jemadar, but released by the magistrate, nothing but bear suspicion extending to him, as that his brother unaided could not have committed such acts, and a slight abrasure having been visible on his shoulder.

“ The *futwa* of the law officer finding no intent proven, acquits the prisoner of wilful murder, and convicts him of culpable homicide, remarking that the lightness of the deceased's stick would account for its not having left any mark on the prisoner's person, and declares him liable to punishment for the price of blood by *deeyut*.

“ Invaluable as a *post mortem* examination of the body would have been in a case of this kind, and however unsatisfactory it is to depend entirely on native evidence, ever lax, indifferent, or negligent at the best, in all matters where nice discrimination is most required, yet the testimony in the present instance appears general, conclusive, and above all suspicion, to this extent at least, that the deceased's person showed but two marks of mortal blows which could in any way have caused his death, *viz.*, either the one on the nose, or the other, the marks of bruises across the wind-pipe. Neither of these marks accords with the prisoner's confession, and I do not consider him entitled to the benefit of any exculpatory matter contained therein, when they are so palpably at variance to the *corpus delicti* itself. The blow on the nose could not have been a direct one, given in any ordinary struggle, or have been in any degree mortal unless from its position struck by a violent thrust, and with a very heavy weapon, whereas the prisoner pointed out to the magistrate the light stick (No. 4,) weighing only half a pound, as the one with which he had struck the deceased. The prisoner's person never showed any marks of the alleged maltreatment, though before the magistrate he stated a slight scratch was still visible on his head. His confession before the police detailed some five marks on his person, but all the witnesses, including his master's brother, Jewnath Ram (witness No. 5) are unanimous in deposing such statement to have been false, not one of the

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marks thus described being then visible. If, as remarked by the law officer, and according to the deceased's switch, (No. 3.) produced, as above stated, by the prosecutor, it was too light to have left any marks on the prisoner's person, there was the less excuse for the prisoner's extreme violence, (to say nothing of its suspicious character) causing instant death on the spot, followed by the immediate making away with the body to such a distance, in so dense a jungle, and the concealment of the deceased's clothes in another direction, bespeak guilt of a deeper hue than that confessed to, which also other singular coincidences in the relative position of the parties to one another do not tend to lessen. The prisoner is Brijlal's grazier. Both are residents of the neighbouring village of Teesee-bar-khoord. Brijlal is also an influential lease-holder in the neighbourhood, and with whom, according to the prosecutor, there have been feuds about leases, that of the Dhajabar land in particular, though of anything of the kind, the other witnesses, Boodhun Rajwar (witness No. 1.) inclusive, pretend utter ignorance. Amongst the witnesses appears Jewnath Ram (witness No. 5), Brijlal's own brother, a very acute, shrewd person. The prosecutor avers that no one of the Teesee-bar-khoord people assisted in the search after the body as all the other villagers of the neighbourhood did. Jewnath asserted that he had, and the other witnesses, under examination, supported him therein, but prevaricated so much about it, and Jewnath's own explanation of his having joined in the search is so lukewarm in itself, that I regard the prosecutor's statement as the most probable of the two. Both the prosecution and defence are so totally silent regarding Jewnath, or his brother Brijlal, and such circumstances as have come to light in no manner implicating them personally, it is possible, supposing there is no grave suppression on all sides, that his appearance in support of the prosecution may originate in a desire to do away with any stigma which might otherwise attach to his brother's name, for a deed committed by one of his retainers of such a reckless character, in so wild a country, as to put every resident's life there more in jeopardy from the attacks of such ruffians, than from those of the wild animals of the surrounding forests. If so, then at least the prisoner must have presumed on being in such employ, or it is difficult to account for such a singular personal attack of a respectable Rajpoot by a Gwalah, so utterly adverse to ordinary native habits and ideas, even under circumstances of greater provocation than any the prisoner pretends to have taken place. At the same time it may be observed, that the prisoner and other Gwalahs generally appear to have been in the habit of driving their cattle home from the jungles close to the Dhajabar cultivation, so that the grazing, which is said to have given rise to the occurrence in so lonely a spot, may have been either accidental or intentional.

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"It would need the corroboration of strong internal or circumstantial evidence to entitle the solitary testimony of the only eye-witness, Boodhun Rajwar, (witness No. 1,) to any weight. Circumstantially, like the confessions, it falls culpably short of what the *corpus delicti* requires, and of any internal grounds of belief, I consider it utterly wanting. His personal appearance and conduct on the trial goes far in support of Boodhun Doosad's (witness No. 15,) account of him 'that he was quite upset, and there was no ascertaining from him what had happened.' He has either been dreadfully frightened by what he witnessed, or he dare not tell the whole truth. The information originally given by him has changed during the progress of the case. The prosecutor's original information, No. 2, of 25th March, as obtained from him, was that four others, the witnesses Nos. 12, 13 and 14, and the prisoner, had driven their cattle on the crops, and it was not known which of the four had killed the deceased, but when Boodhun's evidence was taken on 27th following, No. 49, he only named the prisoner, and it was not until after being questioned more than once, that he stated anything about the beating, and then only to the effect that he saw it from a distance and did not go near or tell any one through fright; yet before the magistrate and this court, he repeats almost the same details, blow by blow, as are contained in the prisoner's confessions! Before this court he said he did not assist his master, when thus attacked by only one opponent, as he had been sick the last three months! So many having been thus accused in the first instance, has been very clumsily attempted to be suppressed before this court, as originating in suspicion only, that such acts, markedly those of more than one person, could not have been perpetrated by the prisoner single-handed. Though the original information thus stands unsupported, it is, under all the circumstances of the case, as not unfrequently happens, perhaps nearer the truth than what is now formally deposed to.

"I can arrive at no conclusion in so dark a case without thus cautiously viewing every ascertainable circumstance connected with it, and these collectively taken tend to maintain the integrity of the inquest, which I can discover no reason for rejecting. With the suspicious marks on the neck, sufficiently recognized as those of strangulation, and which it is difficult otherwise to account for, all others, even if any had been more violent than the remaining one on the nose is described to have been, become secondary in criminality. The magistrate, in his proceedings of 6th and 9th April last, finds fault with the jemadar Feykun Khan's conduct of the case. He appears to be an illiterate person, incapable of writing, but I can discover no good reason for questioning the honesty of the inquest held by him. The record regarding it stands consistent from the very first. He

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himself, Foujdar, (witness No. 2,) and Gumbhere, (witness No. 4), now depose to these guilty marks, and as such testimony, heretofore kept back, has been elicited before this court rather than voluntarily given, there is the greater reason to trust that such marks have been in no respect exaggerated, and although Jew-nath, (witness No. 3), and Boodhun Doosad, (witness No. 15,) deny them, they do not the one on the nose, and it may be remarked of the former that he is a resident of Brijlal's village, whilst the original information of the latter, No. 1, stands recorded in the following words—*gulla pur lattee ka dhag tha.*

“Considering the integrity of the inquest established, I can arrive at no other judgment than that the deceased came to his death by the foulest means, impracticable by one person single-handed, and so finding, in sequence to the prisoner's confessions, I can convict him of nothing less than being an accomplice in the wilful murder of the deceased, he having been tried in the higher court, though as mainly resting on strong presumption only barring capital punishment. I would recommend his being sentenced to imprisonment in labor and irons, in transportation beyond sea for life.”

Remarks by the Nizamut Adawlut.—(Present : Sir R. Barlow, Bart.)—“The prisoner confessed in the Mofussil before the magistrate, and in the sessions court to having beaten the deceased and killed him. He pleaded before the police and the magistrate, that the deceased first assaulted him and he returned the blows. One witness only, Boodhun, saw what took place, and he swears that the deceased struck the prisoner with a *churree*, a thin stick, when the latter killed him. The prisoner pointed out the clothes of the deceased, which he had buried a *coss* distant from the spot where the assault was made. The corpse was also found at a similar distance. The inquest shows that the deceased must have been subjected to much violence ere death ensued.

“The death was not the act, in all probability, of any one individual, nor is it likely that the removal of the body to the distance of one *coss* was effected by one person. Others were named and suspected, but they have been released.

“The prisoner, it is clear, was aiding and abetting in the murder of the deceased, on his remonstrating against his crops being destroyed by the cattle in charge of the prisoner. I therefore confirm the sentence proposed by the sessions judge.”

PRESENT :

W. B. JACKSON, Esq., *Judge*.

GOVERNMENT

versus

NUCHOO KAREEGUR (No. 2), OMURDEE KAREEGUR
(No. 3, APPELLANTS) AND SUMUTOOLLAI FUQEER
(No. 1).

CRIME CHARGED.—Prisoners Nos. 1, 2 and 3, with having, on the night of the 17th March 1852, corresponding with the 5th Cheyt 1258, committed a dacoity in the house of Pokah Sirdar, and plundered therefrom property to the value of rupees 107-6-0; 2nd count, with being present, aiding and abetting in the commission of the said crime; and 3rd count, with having in their possession property acquired by dacoity, knowing the same to have been so obtained.

CRIME ESTABLISHED.—Dacoity.

Committing Officer, Mr. C. E. Lance, officiating joint magistrate of Bograh.

Tried before Mr. T. Wyatt, sessions judge, of Rungpore, on the 1st May 1852.

Remarks by the sessions judge.—“On the statement of the prosecutor on the part of Government, and the evidence adduced, it was proved that a gang of fifteen dacoits, armed with clubs, attacked the house of Pokah (witness No. 1) on the night of the 17th March last, or 5th Cheyt 1258, and plundered it of property to the estimated value of rupees 107-6-0. By the light of two *mussals*, held by prisoners Nos. 2 and 3, (brothers,) while prisoner No. 1 was looking into the chest of Pokah, which was plundered. Pokah identified these three dacoits in the room, one as living about two miles off from his house, and the other two brothers as living close to him, and all three of whom he had been in the habit of continually meeting at the *hauts* and *ghats*. On his implicating the prisoners, they were apprehended and voluntarily confessed to dacoity in the Mofussil and foudaree. Three items of plundered property, deposed to have been deposited with the wife of prisoner No. 2 by prisoner No. 1, and concealed by her in a jungle, where it was pointed out by her to the police, were identified as belonging to the man whose house had been robbed.

“Prisoner No. 1, in his defence, alleged his Mofussil confession to have been extorted, and having been dragged on the way to the sudder station by the police burkundauz, he knew not what he stated to the magistrate.

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Case of
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others.

Sentence
passed upon
the prisoners
convicted of
dacoity, af-
firmed on ap-
peal.

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others.

"Prisoner No. 2 alleged his Mofussil confession to have been extorted, and his foudjaree one to have been influenced by the burkundauz escorting him to the sudder station.

"Prisoner No. 3 alleged he made no confession to the police who had attempted to extort one; that in the foudjaree the magistrate put no question to him, but that the *omlah* copied something from some papers he knew not what.

"None of the prisoners call any evidence to substantiate their pleas.

"I tried the case alone under Act XXIV. of 1843.

"I considered all the prisoners convicted of dacoity, they having been all identified by a credible witness, their confessions in the Mofussil and foudjaree having been proved to have been voluntary, and the plundered property having been identified as the persons whose house had been dacoited."

Sentence passed by the lower court.—Each, to be imprisoned with labor and irons, in banishment, for ten (10) years.

Remarks by the Nizamut Adawlut.—(Present: Mr. W. B. Jackson.)—"I see no reason to interfere with the sentence passed on the prisoners Nuchoo and Omurdee."

PRESENT:

A. J. M. MILLS, Esq., *Officiating Judge.*

JEETRAM SHAHA

versus

GOURCHUNDER SHAHA.

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Case of
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DER SHAHA.

The prison-
er was con-
victed of theft,
but not of fe-
loniously
stealing mo-
ney under
Act XIII. of
1850.

CRIME CHARGED.—1st count, theft of cash, amounting to Company's rupees 350, with a small gunny bag or *khuttee*, on the 9th April 1852, corresponding with 28th Cheyt 1258; 2nd count, having the above stolen property in his possession, knowing the same to have been obtained by theft.

CRIME ESTABLISHED.—Theft.

Committing Officer, Mr. H. Rose, officiating magistrate of Jessore.

Tried before Mr. R. M. Skinner, sessions judge of Jessore, on the 4th May 1852.

Remarks by the sessions judge.—"Prosecutor was going, (with money belonging to himself and witness No. 1,) to buy sugar, accompanied by Gourchunder Shaha, (their *gomashta*) who carried rupees 350 to Khajoorah, but not finding sugar there they crossed the *nullah*. Prosecutor told prisoner to remain whilst he went to send his manjee to Telkoopy. On his return he could not find the prisoner; he searched for two days and then told his partner, who said he had already heard of it and informed at the

thanna. Afterwards the police caught the prisoner (at Sulloo) and he confessed.

"Witness No. 1, Hurromohun, says, that the morning after their departure, he heard that prisoner had run off with the money, and informed at the thanna before the return of Jeetram, who afterwards arrived and corroborated the tidings of prisoner's absconding. The mohurir despatched two persons to search, and they caught the prisoner at Burra Sulloo, who declared the money was at his own house, where he subsequently produced the money. Other witnesses also prove that rupees 350 were entrusted to prisoner by his employers. Witness No. 2 next morning heard of prisoner absconding and informed Hurromohun; he adds that prisoner had not been long in the employ of his master. Witness No. 3 also was present with others when the money was produced by the prisoner, before the mohurir and Surroop Burkundauz, and Baser Sirdar, out of his own house (at Norkalbora). Gourchunder Shaha in the Mofussil and before the magistrate confessed, but said that when prosecutor went to give orders to the manjee, he went onwards towards Telkoopy to buy sugar, by orders of prosecutor. He sat down by the way at Doorgapore, but prosecutor did not overtake him; he therefore went to Shutokully, where he fell ill at Peritram carpenter's; next day he went to Adoo Shah's, at Burra Sulloo, leaving the money at Peritram's. Adoo Shah told him that Hurromohun's people had come to search for the cash. Next day Hurromohun's people, Hurchunder and Kisto Paramanik, demanded the money, which he promised to give, but instead of taking him to Peritram's they took him to the sugar factory and brought the thanna mohurir: he accompanied Warris and Surroop Singh Burkundauz to Peritram's, and gave up the coin, rupees 350. The thanna mohurir said—you keep the money and I will search your house and find it; his brother Peritram Shah placed it on a *machan* under grass. He added that Jeetram told him to sit under the tree across the *nullah* till he returned, but he did not, as prosecutor did not come back. He admits that he made such confession.

"The jury say prisoner was a servant, trusted before, but who had not before embezzled when burkundauzes met him. He confessed that the money was in his possession and he produced it. Prosecutor did not go from Khajoorah home for two days; but neither prosecutor nor his people, in that interval or before the capture, questioned the prisoner; therefore theft is not proven.

"I cannot agree in this verdict. The prisoner names no witnesses to exculpate himself: admits that he made the above confession to the magistrate, but says that he took the money and returned the money of his own accord.

"In his above confession he gave two conflicting reasons for not waiting for prosecutor, and in fact admitted that, as prosecu-

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tor asserts, he was directed to wait for prosecutor's return, but did not do so; he does not even profess to have sent word to prosecutor or to prosecutor's house from Shutokully, or attempt to prove why he went there (although it is not on his way from Khajoorah to Telkoopy), or that he fell ill there, or that he left the money there, or why he went on to Burra Sulloo without it? He was apprehended at Burra Sulloo, and the evidence for the prosecution proves that the money was produced by him at his own house at Narkelbarea. He does not attempt to prove that he produced it to the police at Shutokully, and that it was thence conveyed to his house to be re-produced there.

"He absconded with his master's money and concealed it in his own house, *i. e.*, (*vide* Sections V. and VI. Act XIII. of 1850,) he feloniously stole the money. I accordingly convict him of theft, and sentence him to five (5) years' imprisonment with labor in irons."

Remarks by the Nizamut Adawlut.—(Present: Mr. A. J. M. Mills.)—"The prisoner rests his appeal on his defence. The legal possession of the money was with the prosecutor. He gave it to his servant, the prisoner, merely to carry, and the prisoner absconded with it. There cannot, I think, be a doubt that the prisoner intended to convert the money to his own use. No other conclusion can be fairly drawn from the circumstances of the case. I concur therefore in the conviction of the prisoner of theft, but not of feloniously stealing money under Act XIII. of 1850, as explained by the sessions judge. This is a distinct offence, with which the prisoner has not been charged."

PRESENT:

R. H. MYTTON, Esq., *Officiating Judge.*

MUSST. SONAH DASSEE

versus

SHEIKH NUJUMDEE (No. 8), SHEIKH SHAKIUN (No. 9), JUGDIS SURMAH (No. 11), SHEIKH SULLIM (No. 13, APPELLANTS), SHEIKH RAMZANEE (No. 7), GOOMYE DHOBEE (No. 10) AND JATRANATH (No. 12).

CRIME CHARGED.—1st count, burglary and theft of property in the house of Gour Kishore Doss, master of the prosecutrix, on the 24th December 1851; 2nd count, privy to the above crime; 3rd count, knowingly receiving and having in possession stolen property obtained by the above burglary.

CRIME ESTABLISHED.—No. 7, burglary and theft, Nos. 8, 9, 10, 11 and 12 being accomplices and abettors in a burglary and theft, and knowingly having in possession stolen property; No. 13 being accessory to burglary after the fact and of knowingly having in possession stolen property.

Committing Officer, Mr. W. B. Buckle, magistrate of Sylhet.

Tried before Mr. F. Skipwith, sessions judge of Sylhet, on the 8th June 1852.

Remarks by the sessions judge.—“This case is rather a singular one. The prosecutrix states, that on the 10th Poos, the prisoner Goomye Dhobee told the chowkeedar Dookul Mallee, who was in charge of the house and property of her master Gour Kishore, that if they were negligent nothing would be left in the house, and this statement is confirmed by Dookul. At night she awoke and discovered that a box close to her had been opened and robbed, and calling Dookul they discovered the house had been burglariously entered. Gokul went the next morning to the thanna, gave in a list of the property stolen, and said that he suspected Goomye Dhobee, but did not wish his house to be searched, nor did he in his petition beg the darogah to hold any inquiry. The darogah, however, started to the spot and apprehended Goomye Dhobee, who denied the charge, and also, on the petition of Dookul, searched the houses of several parties, but unsuccessfully, and he, from time to time, reported his proceedings to the magistrate, and at last was directed by him to send in the parties whose houses he had searched. This was done, and they were acquitted.

“When the darogah's first investigation was unsuccessful, he sent notice of the robbery to the neighbouring thannas, together with a list of the property stolen, and on the 19th Magh, or 29th

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SHEIKH NU-
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others.

Sentence of
three and two
years' imprison-
ment upon
prisoners con-
victed of bur-
glary and
theft, confirm-
ed.

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others.

January, the acting mohurir of Goeim Ghat reported that he had obtained a clue to the robbery by means of Hyder, Chowkeedar, and he was desired to investigate the case, and in consequence the prisoners with the property were apprehended.

"Hyder's story is, that the prisoner Sullim, (No. 13,) told him of the robbery, and that the prisoner No. 8, Nujumdee, had merely given him a piece of *sultanee* cloth to make up, and this, on being questioned by the mohurir, he told him also.

"Ramzanee confessed to the burglary before the mohurir, and named his associates, and he stated that the nose-ring and necklaces worn by his two wives were made of the stolen property by a silversmith named Gopalram. This confession was sworn to have been voluntarily made, and Gopal deposes that at the end of Poos, the prisoner gave him old silver to make them with. The cloth he said he had given to Sullim to make up. Sullim admitted that he had received the cloth from Ramzanee to make up, and that he afterwards brought the articles to him to conceal. These he afterwards produced and gave to the police.

"The other prisoners, Nos. 8 to 12, confessed both before the mohurir and the magistrate that they had accompanied Ramzanee to the house of the prosecutrix, but that they remained under a tree while the robbery occurred. They received each a share of the spoil and produced the articles to the police.

"Before this court the prisoners denied the theft, and stated that the mohurir had extorted their confessions by ill-treatment, and some said the police placed the stolen articles where they were found, but four only, Nos. 8, 9, 11 and 12, called witnesses, who, however, stated nothing in their favor other than that they had not before been convicted. Ramchurn Roy, the landholder of Nujumdee, (prisoner No. 8,) called by him to his defence, deposed to seeing the prisoner produce the stolen property of his own accord and give it to the police.

"The jury find the prisoners Nos. 7 to 12 guilty of the burglary and theft, and of aiding one another in its perpetration, and of being knowingly in possession of stolen property, and the prisoner No. 13 of being an accessory after the fact and of being in possession of stolen property. I consider, however, the confessions of Nos. 8 to 12 to prove them only accomplices, but in the rest of their verdict I acquiesce.

"The confessions of the prisoners were made to the mohurir voluntarily, and were repeated by all, but the prisoners Nos. 7 and 13, before the magistrate, otherwise the case would have seemed suspicious as the property was produced at night.

"The prisoner No. 7 has been charged before the magistrate three different times with theft, but was acquitted; he has, however, been imprisoned three times in default of finding security for his good behaviour.

"The prisoner Sullim has been once before convicted."

Sentence passed by the lower court.—No. 7, five (5) years' imprisonment with labor in irons, Nos. 8, 9, 10, 11 and 12, each to two (2) years' imprisonment with labor in irons, and No. 13, three (3) years' imprisonment with labor in irons.

Remarks by the Nizamut Adawlut.—(Present: Mr. R. H. Mytton).—"Prisoners Nos. 8 and 9 appeal, asserting that they were maltreated by the police, and that their maltreatment was proved by Buddun and Doollub, burkundauzes. These persons were not examined or cited in the sessions. In the magistrate's court, they did not prove maltreatment. Nos. 11 and 13 plead that the evidence against them is false.

"The prisoners have been convicted upon very full proof, and there is no reason to interfere with the sentence passed. The appeals are rejected."

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others.

PRESENT:

A. J. M. MILLS, Esq., *Officiating Judge.*

MUDHOSOODUN DOSS

versus

BHUGUTRAM DOSS.

CRIME CHARGED.—Wilful murder, in having so severely beaten the prosecutor's uncle, Juggernath Doss, as to cause his death; 2nd count, aiding and abetting as accomplice in the above crime.

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CRIME ESTABLISHED.—Culpable homicide.

Committing Officer, Mr. V. H. Schalch, magistrate of Midnapore.

Case of
BHUGUTRAM
Doss.

Tried before Mr. W. Luke, sessions judge of Midnapore, on the 27th April 1852.

Remarks by the sessions judge.—"It is in evidence that on the 24th June 1851, a quarrel ensued between the deceased and prisoner; that the latter, with the assistance of his son, Soonder-narain Roy, violently assaulted the former, and seizing him by the hair of his head dragged him to their house, where he became insensible. His nephew, accompanied by the police, immediately proceeded to the spot, where they found deceased and removed him to his own house, where he expired the following day from the ill-treatment he had received. The prisoner denies his guilt, and pleads an *alibi*, and that he left his home in consequence of tyranny and oppression of the zemindar. From the inquest held in the Mofussil, it would appear that the body bore several marks of violence upon it, especially about the region of the stomach and loins. These marks, according to the evidence, were produced

The gravity
of the offence,
viz., culpable
homicide, con-
sidered under
the circum-
stances to
have warrant-
ed a heavier
sentence than
that passed.

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by kicks and blows of the *fists*, though the assistant surgeon is of opinion that they must have been inflicted by the poke of some blunt weapon and were quite sufficient to account for the death of the deceased. Throughout the inquiry there is no proof that either the prisoner or his son was armed with any weapon, and it must be presumed that whatever the nature of the blows, they were inflicted by the hands or feet. Be that as it may, there can be no question that they were the cause of Juggernath's death, who, up to the time of the assault made upon him, was in perfect health. It appears that a dispute had existed for years between deceased and prisoner about the land on which the assault took place, giving rise to a great deal of bad-feeling, nevertheless, I am of opinion that the attack on the deceased was not premeditated, but prompted by angry feelings, excited at the moment, with no intention of taking life. The conduct of the prisoner, after he became aware of the result of the beating, is corroborative of the evidence against him. The assessors declare the prisoner guilty of culpable homicide, and concurring in this finding, he is sentenced to seven (7) years' imprisonment with labor in irons."

Remarks by the Nizamut Adawlut.--(Present: Mr. A. J. M. Mills.)—"In his petition of appeal the prisoner urges, that the deceased died of cholera. This is a mere unsupported assertion, and is completely disproved by the evidence of the surgeon, who deposes to the deceased having been severely beaten, and to there being marks of beating on his head and on his chest (caused by some blunt instrument), which blows were quite sufficient to account for his death. The evidence to prisoner violently assaulting the deceased in the field and seizing him by the hair of his head, and with the assistance of his son, dragging him to his house, is clear and distinct; and the prosecutor speaks to going to the prisoner's house, to finding the door closed, and hearing the sound of blows coming from the inside. It is unknown what happened there, but it is not improbable that the deceased was most severely beaten. The crime, though not amounting to murder, is of a very aggravated character. The circumstance of the prisoner flying from the village with all his family immediately on hearing of the death of the deceased is materially unfavorable and suspicious. The conviction is fully supported by the evidence, but the gravity of the offence warranted, in my opinion, a severer sentence. I reject the appeal. It has, I remark, been pointed out to the sessions judge, that aiding and abetting, being included in accompliceship, should have been omitted in the wording of the second count."

PRESENT :

R. H. MYTTON, Esq., *Officiating Judge.*

KABIL PRAMANICK

versus

GADOO SHEIKH (No. 7), BEDOO SHEIKH (No. 8),
BUKSEE KAREEGUR (No. 9), GADUL KHOOLOO
(No. 11), DOOTEAH FUQEER (No. 12), KISTO MALLEE
(No. 13, APPELLANTS) AND UDDYET CHUNDER SHAH
(No. 10).

CRIME CHARGED.—Nos. 7, 8, 9, 12 and 13, 1st count, burglary in the house of the prosecutor and stealing therefrom property to the value of rupees 152-12-0; 2nd count, being accomplices in the said burglary; and 3rd count, having in their possession property acquired by the said burglary, knowing that it had been so obtained; and No. 13, 4th count, having possessed and sold stolen property, knowing the same to have been so obtained.

CRIME ESTABLISHED.—Nos. 7 to 9 and 12, accomplices in burglary and theft; Nos. 10 and 11, having in their possession, and No. 13 having possessed and sold property acquired by burglary, knowing that it had been so obtained.

Committing Officer, Mr. C. E. Lance, officiating joint magistrate of Bograh.

Tried before Mr. T. Wyatt, sessions judge of Rungpore, on the 14th April 1852.

Remarks by the sessions judge.—“From the statement of the prosecutor (a trader in thread, whose house was robbed,) and the evidence adduced, it was proved that on the night of the 28th September last, or 13th Assin 1258, the house of the prosecutor was burglariously entered into and property, consisting of a great number of English bundles of thread, stolen therefrom, to the estimated value of rupees 152-12-0. On the prosecutor complaining at the thauna, and suspecting the prisoners Nos. 7, 9 and 12 (the two last weavers), they were arrested and their houses searched, and a part of the stolen property found in two of them *viz.*, Nos. 9 and 12, (brothers, living together,) all of them confessing the burglary and implicating one another and other prisoners, *viz.*, Nos. 8, 10, 11 and 13; No. 8, on being arrested, voluntarily confessing in the Mofussil to complicity in burglary and theft of fifty-two bundles of thread, and voluntarily repeating that confession before the assistant magistrate of Serajgunge; No. 10, on apprehension, confessing to having purchased a part of the stolen property from No. 13, knowing it to have been stolen; No. 11, to having concealed a portion

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Sentence of
seven and five
years' imprisonment, on
prisoners
convicted of
burglary and
theft exceeding
rupees one
hundred in
value, confirmed.

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of the property knowing it to have been stolen and afterwards pointing it out; and No. 13, being proved to have knowingly possessed and sold to No. 10 a part of the stolen property. All the recovered property was identified as the prosecutor's.

"In their defence the prisoners (all but No. 13) allege their Mofussil confessions to have been extorted, and their foudaree confessions to have been either copied from the Mofussil confessions, or that they did not know what they stated in the foudaree. They have no evidence in support of their allegations. Prisoner No. 13 merely stated that he had been maliciously implicated by Panchoo Khaloo, (a witness, summoned on the part of the prosecution.) He had no witness to prove the malice.

"The *futwa* convicts prisoners Nos. 7, 8, 9 and 12 of the second count (complicity in burglary) and prisoners Nos. 10, 11 and 13, of knowingly possessing and selling stolen property knowing it to have been stolen. I concur in this finding.

"This case of burglary was committed owing to the amount stolen having exceeded one hundred rupees."

Sentence passed by the lower court.—Nos. 7 to 9 and 12, to be imprisoned, with labor and irons, for seven (7) years, and Nos. 10, 11 and 13, to be imprisoned, with labor and irons, for five (5) years.

Remarks by the Nizamut Adawlut.—(Present: Mr. R. H. Mytton).—"All the prisoners except Uddyet, No. 10, have appealed, alleging that their Mofussil confessions were extorted by ill-treatment, and that they were induced by threats to repeat their confessions to the assistant magistrate. This is contrary to their defence in the sessions court, where some asserted, some insinuated that the *omlu* copied from their Mofussil confessions. Neither assertions are supported by any proof.

"Prisoner No. 13 adds that the judge neglected to take the evidence of his witnesses. It is recorded in his defence that he did not wish them to be examined, because they had colluded with the prosecutor. The appeals have no foundation and are rejected."

PRESENT:

W. B. JACKSON, Esq., Judge.

SHEIKH KALOO

versus

SHEIKH JOBEE.

CRIME CHARGED.—Wilful murder of Laloo Chokrah.

Committing Officer, Mr. Alexander Abercrombie, assistant exercising the powers of joint magistrate at Jumalpoore, zillah Mymensing.

Tried before Mr. R. E. Cunliffe, sessions judge of Mymensing, on the 23rd July 1852.

Remarks by the sessions judge.—“From the statements in the foudaree of the eye-witnesses, cow-herd boys, of too tender an age to understand the sanctity of an oath, it appears that the deceased, a boy of nine years of age, went and danced about in a field of rice belonging to the prisoner, who abused him for so doing and threw a clod at him, which knocked him down, and he remained senseless till his death next day. The evidence of the civil surgeon shows that death was caused by an injury to the heart which might have been done by a clod thrown. In his defence in the Mofussil and in the foudaree the prisoner said that he was working in his field, weeding it and throwing the clods behind him, and hearing the deceased who was behind him, crying, he spoke to him, but received no answer, and the other boys took him home, and that he might have been hit by one of the clods of earth and weeds he was throwing behind him. In the Mofussil he also said he had forbid deceased to come into his field. Before this court he denied having purposely struck the deceased, who may have been hit by one of the clods he was throwing behind him, and named witnesses to prove it, but they knew nothing about it. The *futwa* of the law officer declares the prisoner guilty of *kutl-khata fil-fael*, or purely accidental homicide, and liable to *deeyut*, and he would of course be acquitted if I could concur in the opinion that it was accidental. I consider the prisoner guilty of having wilfully thrown a clod at the deceased, being irritated at his trampling his crop, which caused his death, and under the circumstances of the case would suggest imprisonment for six (6) months, and rupees twenty-five (25) fine in lieu of labor.”

Remarks by the Nizamut Adawlut.—(Present: Mr. W. B. Jackson).—“I do not see by what evidence the sessions judge is satisfied that the prisoner threw the clod at the boy and thereby killed him, being irritated at his trampling his field. The prisoner does not confess the intent to strike the boy with the clod, and

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The Nizamut Adawlut, concurring with the zillah law officer in dissent from the opinion of the sessions judge, acquitted the prisoner, considering the intent to do injury to the deceased not proved.

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the evidence of the other boys present at the time is inadmissible, because they are stated to be too young to understand the nature of an oath. The fact that the boy died from the blow is scarcely accounted for; a clod of earth striking on the ribs is not likely to bruise the substance of the heart, and thus to cause death; if there was any previous disease it might do so, but not otherwise; the clod is not stated to have been a heavy one, and in June the earth must have been soft from the rains. However, as the blow was soon followed by the boy's death, it may be considered to have occasioned it, though the precise manner is not explained. I find no proof of intent to do any bodily harm, and therefore acquit the prisoner: his confession is, that he did not intend to strike the boy with the clod, but it hit him by accident. I therefore acquit him of the charge, and direct his release."

PRESENT:

SIR R. BARLOW, BART., }
W. B. JACKSON, ESQ., } *Judges.*

R. H. MYTTON, ESQ., *Officiating Judge.*

NESROO MANJEE

versus

BHUWANEE SINGH.

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CRIME CHARGED.—Count 1st, wilful murder of Chamaroo; 2nd count, severely wounding Chidam with intent to cause his death.

Committing Officer, Mr. R. M. Beaufort, magistrate of Backergunge.

Tried before Mr. A. S. Annand, officiating sessions judge of Backergunge, on the 13th July 1852.

Remarks by the officiating sessions judge.—“The prosecutor Nesroo Manjee deposes, that on the 1st Phagoon last, he left Rungpore, with a cargo of jute for Calcutta, the property of Sheebul Bunshee Shah, mahajun, who had given him the prisoner Bhuwance Singh to act as a guard for the protection of his property on the voyage; that besides prosecutor and prisoner there were six *mullahs* in the boat, named Chamaroo, Chidam, Okeel, Purshad, Paylah and Neelaram. The prisoner Bhuwance Singh did not eat fish, and disliked the smell of it, and deponent and his *mullahs* were in the habit of eating it, though prisoner was constantly forbidding them to do so. On Wednesday, the 3rd Bysakh, they arrived at Jalloctotee, in the thanna of Neel Chitty in this zillah, when they bought a fish from the bazar and were preparing to cook it, when the prisoner ordered them to take it to the bank and cook it there, but on account of the tide they

The act of the prisoner having been held by two judges of the Nizamut Adawlut, in dissent from a third judge, to be wilful murder, he was sentenced to death.

could not do so, and cooked and eat the fish that day on the boat. The prisoner speaking Hindoostanee prosecutor and his *mullahs* were not able to understand all that he said, nor could he understand what they said. After having eaten, prosecutor and the rest went to sleep, Chamaroo and Chidam upon the chopper of the boat and the rest below, the prisoner in a *jhopree*, or semi-circular shed made of mats, on the chopper. About 12 o'clock at night Neelaram and Paylah called prosecutor, and getting up he saw that Chamaroo had a very large wound on the side of the forehead, extending round and above the ear, and Chidam a long wound on the right jaw-bone. Neelaram and Paylah told the prosecutor that they were pushing the boat off into deeper water, as by the fall of the tide she had got aground, and for that purpose they had got into the water themselves. Whilst they were doing this, the prisoner struck Chamaroo and Chidam one blow with his *tulwar*, and on their calling out dropped into the water and ran off; that deponent then took the wounded men from the chopper and bound up their wounds; that he then went to the police *pharee* which was close at hand (forty *haths* off) and gave intelligence of what had happened to the mohurir. On returning to the boat heard that Kalye Chowkeedar had seized the prisoner and brought him to the *pharee*. On the next day, the mohurir having drawn up his *sooruthal* and sent in the wounded men, the prisoner, deponent and witnesses to Burrisaul, the wounded men were sent into the hospital on Friday, and Chamaroo died there from the effects of the wound on Saturday: Chidam recovered. The only reason that deponent can give for the attack upon Chamaroo and Chidam is, that they and the prisoner had abused one another about the fish and that prisoner, being angry on that account, had got up and wounded them. They were sleeping four *haths* distant from the prisoner with their faces close together when they were struck. He was seized with the sword in his hand, which prosecutor identifies as the one before him. The crew used at other times always to prepare and eat their fish on the bank, but on the day of the occurrence, on account of the tide and the mud and filth on the bank, they cooked and eat on board, and the defendant was very angry with them in consequence. They had all gone to sleep about 8 o'clock. Deponent began to load his boat on the 1st Phagoon, but actually started from Rungpore in Cheyt; does not recollect on what date.

"The prisoner Bhuwanee Singh confessed the crime with which he was charged in the Mofussil, stating that the *mullahs* were continually quarrelling with him and abusing him, and that he remained two days without food on that account; that when he got to Jallocttee he purchased food and having eaten went into the *jhopree* and laid down; that Chamaroo and Chidam came

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and laid down together on the chopper, when he overheard them planning to beat him, on which he drew his sword and struck both one blow with it, intending to kill them, and then got to the bank and ran off, when he was seized by a chowkeedar and one of the villagers and taken to the *pharee*. Before the magistrate he stated that he was lying sleeping on the boat, when he saw two men standing outside, and thinking that they were thieves, he drew his sword and struck them, when he found out that they were two of the *mullahs* of the boat, Chamaroo and Chidam; that a chowkeedar came and seized him. In this court he tells a ridiculous and incoherent story to the effect that Nesroo, Paylah and others were cutting the *jhamps* of the boat, and thinking they had leagued with thieves he struck the *jhamp* with his sword. Witness No. 1, Chidam, deposes that he was one of the *mullahs* of the prosecutor's Nesroo's boat, which had started from Rungpore as above described with the prisoner as a guard; that on the road the prisoner had forbidden them to cook and eat fish on the boat and they were accustomed to cook and eat on the bank in consequence; that one day in Bysakh last, when they had arrived at Jallocottee in this zillah, the manjee brought a fish from the bazar, and as they could not cook it on the bank, on account of the filth there, they prepared to do so in the boat, when the prisoner abused them and their relations, and prohibited their cooking on board, but that they did so, notwithstanding, and after having eaten their fish went to sleep, witness and Chamaroo close together on the chopper and the others below. The prisoner also retired into his *jhopree* on the chopper; that about 12 o'clock at night witness was awoke by a blow on his neck and finding that he had a severe wound he cried out, when he saw the prisoner Bhuwane Singh, with a sword in his hand, drop into the water and run off. Witness then saw that Chamaroo had a very severe wound on the forehead and was senseless; that he and Chamaroo were taken below by the manjee and their wounds attended to; that prisoner was seized the same night and witness and Chamaroo were sent into the hospital on the next day, where Chamaroo died two days afterwards from the effects of the wound. The only reason for the attack made upon witness and Chamaroo was on account of the prisoner's anger, because they had cooked and eaten their fish on board the boat on the day in question. Witness and Chamaroo were sleeping close together, with their arms round each other; the blow fell upon witness's jaw and on the forehead of the deceased Chamaroo. Recognizes and identifies the prisoner and the sword with which he and Chamaroo were wounded, and states that there had been no quarrel between them except regarding the fish as before mentioned. This witness has the seam of a deep wound from his

chin to his ear along the jaw-bone. Witnesses No. 2, Neelaram and No. 3, Paylah, saw the assault as detailed in the evidence of the prosecutor and witness No. 1, and corroborate their accounts in every respect. Witness No. 4, Kalye Chowkeedar, apprehended the prisoner with the sword in his hand on the night of the occurrence, and with the assistance of Nawaboodeen Chowkeedar, took him to the *pharee*. Witnesses Nos. 13 and 14 corroborate the deposition of the prosecutor and the evidence of witnesses before given in all material points.

"The assistant surgeon deposes, that he examined the body of Chamaroo, and found the skull fractured to the extent of about four inches, and a large quantity of black blood extravasated upon the surface of the brain, which, coupled with the severe hemorrhage that took place, was the cause of death. The wound was above the left ear, and extended for about five inches, two and a half on each side of the ear, and had been inflicted with a sharp-cutting instrument, probably a sword like the one now shown, Chamaroo died three days after he came into hospital and there were never any hopes of his recovery; that he also examined Chidam, who had a severe wound which extended the whole length of the jaw on the right side, of a most dangerous character, penetrating to the bone and inflicted by a sharp-cutting instrument.

"The assessors, with whose assistance I tried the case, convicted Bhuwanee Singh of the wilful murder of Chamaroo and wounding Chidam, and in this verdict I concur. The prisoner appears to have been much offended by the *mullahs* bringing the fish on board and cooking and eating it there in spite of his orders to the contrary, which though they had previously obeyed, they could not, on this occasion, attend to, on account of the tide and the filthy state of the bank where they were. The *mullahs* went to sleep about 8 o'clock, and the prisoner apparently did the same. Four hours after he got up, drew his sword, struck one violent blow at two of the men who were lying asleep together on the *chopper*, dropped into the water and ran off. He appears to be a man of flighty and excitable temperament, and if he had been determined on murder, would probably have struck more than once. I think that, under all the circumstances of the case, imprisonment for life will be a sufficient punishment."

Remarks by the Nizamut Adawlut.—(Present: Sir R. Barlow, Bart. and Messrs. W. B. Jackson and R. H. Mytton).—MR. R. H. MYTTON.—"The prisoner, both before the police and the magistrate, admitted that he struck the fatal blow. Before the latter authority he attempted to justify or palliate it by saying he saw the deceased and the wounded man Chidam standing before the door of his cabin, and took them for thieves. In the sessions court he improves on this story by asserting that he saw the

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boatmen attempt to cut the *jhamp*. Both these attempts at justification or palliation are clearly contrary to fact. One blow of a sword could not, except under the circumstances stated for the prosecution, have produced two such wounds as those on the deceased and Chidam.

"There is no reason to doubt that the prisoner was enraged with his victims for cooking fish on board the boat; that he waited until they were asleep, and then dealt them one blow with his sword, with the intent, as he admitted to the police, of killing them. As regards one, the attempt was successful, and as regards the other the wound caused was a dangerous one. The prisoner has been guilty of a deliberate cold-blooded murder upon the most trivial provocation.

"The only reason given by the sessions judge for recommending a mitigated punishment is, that the prisoner appears 'of flighty and excitable temper.' If by 'flighty' is meant 'of unsound mind,' I can find no evidence direct or presumptive of his being so. The only indication there is of it, is, the prisoner's want of precaution in not having thrown away his sword when he escaped. But this may be attributed to the confusion of mind, which may naturally be expected to follow the commission of such a crime.

"His temper being 'excitable' is not a reason applicable to the case, for the crime was not committed under the immediate excitement of passion. The prisoner deliberately waited till the deceased and Chidam were asleep, and having given the blow, he showed his consciousness of having committed an offence by running off.

"I see no reason for abstaining from passing sentence of death on the prisoner."

MR. JACKSON.—"This is a curious case. If the mere facts be received as stated, there is no difficulty whatever; but if it be attempted to gather the intent of the prisoner from these facts, it is difficult to arrive at a satisfactory conclusion. The prisoner, a Rajpoot, native of Bindrabun, was on board a boat in charge, as *churundar*, of property belonging to a mahajun; the manjee and boatmen ate fish at their meals, and usually at the prisoner's request cooked it on shore, as he found the cooking on board disagreeable; one day the manjee bought a fish, and the men began cooking it on board for the crew's supper: on the prisoner's objecting, they told him there was no clean spot on shore where they could cook; the prisoner abused them they say, though they admit they could not understand him well, as he spoke Hindoostanee and they are Bengalees; but he made no further objection and they all went to sleep in the boat; this was in the evening; the prisoner slept in a small *jhopree*, or hut made of a piece of matting, on the top of the boat, two of the

boatmen also on the top of it, under their clothes; the rest of the men were inside the boat; the boat was moored some ten or twelve feet from the shore, in six feet water.

"In the middle of the night it is stated that one of the boatmen got up to alter the position of the boat, which had got too near shore, and just at that time, without saying a word, the prisoner came out of his sleeping place with a drawn sword and struck one blow on the cloth under which the two men were sleeping and wounded them both on the head severely,—one died of the wound afterwards. The prisoner then jumped into the water and swam ashore; he went into the village, still carrying his sword, and was there apprehended by the watchmen, when walking about, carrying the sword; he said he had a quarrel with the crew and they had thrown him into the water; and that he should go to Benares.

"Now if the prisoner wanted to kill these two men for making the boat disagreeable with their fish, as they say, it seems strange that he should not have done so at the time, instead of several hours after; if that was the only provocation, one would expect that his resentment would show itself at the time; not that the prisoner should go quietly to sleep, and after several hours get up and kill two of the men; if this was the only provocation, too, his resentment would be against the manjee and all the crew, not against these two individuals; again, if he wished to kill these men, it is not probable he would content himself with striking one blow on the cloth under which they were sleeping; indeed if the facts are correctly stated, it is not proved that he knew who was under the cloth. He might have supposed that it was some of the crew, so that there was no malicious intent against any one particular individual. I admit that the wanton taking of life may be held murder, but the prisoner does not seem to have acted in a violent and wanton manner. At the time of the provocation he put up with the annoyance and contented himself with a little abuse. It seems quite unaccountable that he should do this and three hours after get up in the middle of the night and with a sword cut at the heads of two men, whom he could not possibly distinguish under a cloth. I am inclined to think that some important facts are not brought forward, or else that the prisoner rose from his bed in the middle of the night under the influence of some temporary excitement. It is possible that there was more provocation, and that the prisoner may, as he says, under some misconception, have taken them for thieves. However this is not proved, and taking the facts as they stand, I convict of culpable homicide, as I consider the malicious intent, such as to justify a verdict of murder, is not made out. I would sentence the prisoner, as recommended by the sessions judge, to transportation for life."

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SIR R. BARLOW, BART.—“It is clearly proved, both by the evidence on the record and by the confessions of the prisoner, that the deceased Chamaroo met his death at his hands.

“In his Mofussil confession, which is written in the Bengalee character, not in Hindustanee as it should have been, the prisoner is made to say that *he intended to kill* the deceased and Chidam, a witness, who was severely wounded by the same blow. The witnesses, whose names are attached to the confession, were not questioned as to these particular words; they merely verify the confession in general terms. The confession assigns as the reason for killing the deceased that the prisoner overheard him and Chidam who were planning to beat him.

“In the foudaree court he stated that he thought that thieves had attacked the boat and cut at them with his sword, when he discovered they were the boatmen of his own boat.

“Before the sessions judge in his defence, he said that he made a cut at the *ghamp* of the boat while Nusroo Manjee and other boatmen were entering the boat through the mats.

“The prisoner must be held responsible for his act, which clearly amounts to wilful murder, unless he can show any circumstances which reduce his offence to one of a less grave nature. From the moment of his apprehension by the chowkeedar with the sword in his hand to the date of his trial in the sessions court, the prisoner has given different accounts of the murder, and his defence is necessarily unworthy of any credit. On the other hand, the prosecutor and his witnesses, one of them also most severely wounded by the prisoner, have told one consistent story from first to last, which is further confirmed by the deposition given by the deceased shortly before his death. The prisoner by the evidence is proved to have risen from his sleep at midnight, and with a sword to have inflicted, by one blow, two most severe wounds on the heads of two men sleeping on the top of the boat near him. Why he availed himself of that opportunity, and what was the cause of this outrageous assault, is not to be ascertained by any satisfactory information furnished by the prisoner; while the case for the prosecution establishes the commission of a deliberate murder by the prisoner without a single circumstance, so far as the record shows, which would justify a mitigated sentence. I concur with Mr. Mytton, in passing sentence of death upon the prisoner. A warrant will issue accordingly.”

PRESENT.

J. R. COLVIN, Esq., Judge.

MAHOMED AMA

versus

JOHIROODDEEN (No. 16) AND BUXEE MULL (No. 17).

CRIME CHARGED.—1st count, theft of property valued at rupees 32-10-0, belonging to the prosecutor; 2nd count, with being in possession of property knowing it to have been obtained by the above theft.

CRIME ESTABLISHED.—No. 16, being in possession of stolen property knowing the same to have been obtained by theft. Prisoner No. 17, theft of property valued at rupees 32-10-0, belonging to the prosecutor, and of being in possession of property knowing the same to have been obtained by theft.

CRIME ESTABLISHED.—Being in possession of property knowing the same to have been obtained by theft.

Committing Officer, Mr. F. B. Simson, officiating magistrate of Chittagong.

Tried before Mr. S. Bowring, officiating sessions judge of Chittagong, on the 6th May 1852.

Remarks by the officiating sessions judge.—“The prosecutor stated that his house was entered at night and robbed of property valued at rupees 32-10-0. Suspecting the prisoners from their notorious bad character, he caused their houses to be searched, when part of his property was found in possession of Johirooddeen, (No. 16,) and part in that of Buxee Mull, (No. 17.)

“Witnesses proved the production of prosecutor’s property from the prisoners’ houses.

“The prisoner No. 16 admitted at the thanna having been consulted as to the burglary by the real criminals as he described them, but denied all knowledge of it in the magistrate’s and in this court. The prisoner Buxee Mull, (No. 17), said the cloth belonged to him, and a brass pot had been concealed in his house. He proved a slight quarrel with the prosecutor by witnesses, but could not prove the cloth to be his, though he said he had caused it to be prepared in the jail from which he was only released in Poos last, and could not show how the brass pot had been introduced into the house, while apart from his character it is at least as probable he robbed the prosecutor from motives of enmity as that the prosecutor should have charged him through malice.

“The jury convicted the prisoners.

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Case of JOHIROODDEEN and another.

Conviction and sentences on two prisoners on the charge of knowing possession of stolen property, upheld.

Remark that it is always proper that the precise charge or charges, held to be established against a prisoner, should be distinctly set forth by the judge in his finding at the close of the vernacular record of trial.

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"The prisoners are of notorious bad character as shown by the previous convictions and the evidence; Johirooddeen was convicted also in the case of Mahomed Ama, prosecutor."

Sentence passed by the lower court.—Prisoner No. 16 to be imprisoned, with labor and irons, for the period of seven (7) years' and two (2) years' in lieu of corporal punishment, in all, nine (9) years. Prisoner No. 17 to be imprisoned, with labor and irons, for the period of seven (7) years.

Remarks by the Nizamut Adawlut.—(Present: Mr. J. R. Colvin).—"The prisoners are convicted by the officiating sessions judge, in his proceeding of 6th May 1852, of the crimes *stated in the calendar*, which include theft as well as the knowing receipt of stolen property. This may have been through a mere oversight, and it is always proper that the crimes, which are held to be established, should be distinctly set forth in the finding by the judge at the close of the record of trial, so that any mistake on this essential point may be carefully guarded against. Against No. 17, Buxee Mull, there is *no* evidence of the actual perpetration of theft, and against No. 16, Johirooddeen, there is only the very slender and untrustworthy evidence of a Mofussil confession. The articles of property were not found in their possession till two days after the theft had been committed.

"I uphold the conviction on the second count only, but do not modify the sentences, as the prisoner No. 16 has been convicted also in another case of burglary, and both are shown, by the records of former convictions, to be old offenders."

PRESENT :

A. J. M. MILLS, Esq., *Officiating Judge.*

GOVERNMENT

versus

FUQEEER DOSS (No. 6), RASH BARREEK (No. 7),
RUGHOO DHUL (No. 8), PURIKHIT DEY (No. 9),
JUGGOO NAIK (No. 10), LOKEE BARREEK (No. 11),
BENODE DOSS (No. 12), MUGHUN JENNA (No. 13),
NURSING DEY (No. 14), DWARKEENATH BABOO,
ALIAS DWARKEENATH DOSS (No. 15) AND KANOO
BABOO, ALIAS KANOOCHURN DOSS (No. 16).

CRIME CHARGED.—1st count, wilful murder of Chundramadie Chowdraine; 2nd count, accomplices, and with aiding and abetting the murder of Chundramadie Chowdraine aforesaid; and 3rd count, accessories to the murder of Chundramadie aforesaid, before and after the fact.

Committing Officer, Mr. W. J. Allen, magistrate of Balasore, Cuttack.

Tried before Mr. M. S. Gilmore, sessions judge of Cuttack, on the 2nd June 1852.

Remarks by the sessions judge.—“ In consequence of Deb Jenna and Deb Dey, the two principal witnesses in this case, who were in the house of the deceased at the time she is said to have been attacked and strangled, having perjured themselves, and the prosecutor, who was the mookhtar, (and as would appear, from the circumstances of the case, her paramour also,) having been at Balasore, fifteen *coss* distant from Koosera on the night in question, I found it necessary to have recourse to the statement of Punchoo Jenna, chowkeedar of mouza Koosera, made before the police darogah on the morning of the 30th December, as the foundation of my report of the circumstances attending the murder.

“ Punchoo Jenna, chowkeedar, the individual alluded to, deposed at the thanna, that about ten *ghurries* of the night of the 29th, or 1-30 A. M. of the 30th December last, while he was going his rounds with Sheikh Kanoo Sirdar and Lokee Jenna and Pooree Jenna, pykes, he heard some person crying out in the direction of Chundramadie's house, ‘ she has been killed, she ‘ has been killed,’ and on going to the house with the above-named persons, and Soojun Jenna and Teeluck Pundit, who also hearing the alarm ran to the spot, he and those with him were told by Deb Dey and Deb Jenna that while they were sleeping on a mat some persons came and sat on them, and others forced their way into the sleeping apartment of Chundramadie, either

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The prisoners were acquitted on account of suspicion attaching to the truth of their confessions.

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by breaking or cutting the chain by which it was fastened on the inner side, and killed her, and on their entering the house they found Chundramadie lying on her bed speechless and almost dead, but still respiring, with her neck swollen, and a little blood oozing from her mouth on to the bed-clothes; and that he had come to give information by direction of Indur Mahanty, Joode-shut Mahanty, Nubeen Naik Burooah, and others, who were applying warmth and other remedies to try and restore her, and on being questioned by the darogah, he further stated that he supposed that the persons who attacked Chundramadie tried to kill her by pressing a stick across her throat; that all the property belonging to the deceased was in existence, and that the sheath of a sword, belonging to Chundramadie, was lying near her bed, but he did not know what had become of the sword, and there were no signs of the party who had attacked her having had any *musul* or light with them; that Deb Dey and Deb Jenna, who were sleeping in a compartment on the north side, and the deceased in another on the east side of the house, were the only persons in the house, and that they recognized no one; that he, the chowkeedar, suspected none but Nurhurry Chowdry, Akhee Baboo and Dwarkee Baboo, the nephews of Chundramadie, of having killed her, as they were always quarrelling with her about their zemindaree; that he did not know whom the deceased's servants suspected; that there were no marks of violence on any other part of her body except the neck; and that on calling at the Chowdraine's nephews' house, prior to the occurrence, he was informed by Dai Doss that Nurhurry Chowdry and Dwarkee Baboo were not at home, and that they had gone to mouza Doobsahee, pergunnah Kumardur, but Akhee Baboo and Kamoo Baboo were at home, and the latter came to the house of the Chowdraine after the occurrence, and seeing the state she was in, went away shedding tears.

"On receiving the above information, the police darogah, with the mohurir and jemadar, proceeded to the house of the deceased Chundramadie, and recorded the deposition of Musst. Daina Die, her daughter, who was in the first place made prosecutrix in the case, but was afterwards relieved from the office on her petitioning the magistrate to that effect. The following is the purport of her deposition:—

"Shortly after she and her servants retired to rest, at six or seven *ghurries*, she heard some persons calling out in the direction of her mother Chundramadie's house,* and imagined that they were her mother's chowkeedars; but shortly afterwards, Deb Jenna,

* It appears from the deposition of Nitranund Mahanty, the present prosecutor, that Musst. Daina Die's house is distant two beegahs from her mother's.

her mother's khansama, called to her saying, her mother had been killed, and if she wished to see her, to go at once; that she became alarmed, and sent Dhunardhun Punda to call Teeluck Pundit and Soojun Jenna, and with them and her *phoilee*, or female servant, went to her mother's house, where she procured a light, and saw that the chain of the door of her mother's sleeping apartment had been cut, and on entering it found her mother lying with a *ruzzai* and a woollen cloth over her body, and having removed the *ruzzai*, she observed a small quantity of blood oozing from her nostrils, and on calling to her she gave no answer; and on looking about the house she saw a plank of the lid of a chest, which was in the south verandah lying on the ground, and near to it some half-burnt papers; and she further discovered that a small box, containing decrees of court and other documents which was kept inside the said chest, was missing; that Punchoo Jenna, chowkeedar, and others then arrived, and after pointing out to them what she had seen, she sent the said chowkeedar with the Burooah and others to give information at the thanna, and herself got fire and applied it to resuscitate her mother, and in reply to the darogah's questions, she stated that she suspected Nurhurry Chowdry, Akhee Baboo, Kanoo Baboo and Dwarkee Baboo, the deceased's nephews, who had a quarrel with her about their zemindaree, and likewise their dependants, Nursing Naik, Dai Doss and Fqueer Doss, of being the perpetrators of the outrage, they, the said Baboos, having caused a twelve annas share of talook Doobsahae, which her mother to evade her creditors had transferred *benamee* in their names, to be recorded as their own property; and her mother having sued them for possession in the civil court, and adopted Kasse Baboo, the son of Rajun Canoongoe (to prevent their succeeding to the property on her death). That the persons who attacked her, neither left any weapons behind them nor any trace of their having had any light with them; that she wished the houses of the above persons to be searched, in the hope of finding the missing documents; that the sudder and mofussil doors of the house were always closed at night on the inner side, and were so on the night of the occurrence. And on being further asked by the darogah, with reference to her last answer, how, if the sudder and mofussil doors were shut, the persons who killed her mother could have got into the house, *as it appeared that they had not got over the chopper into the mujjee bahar*, or inner court-yard, which was the only way they could have got into it? she replied,—that the defendants might have got into the *mujjee bahar*, and concealed themselves somewhere in the evening before the doors were closed; or Deb Jenna and Deb Dey might have opened the doors and let them in; but how they actually got in she could not tell. She also stated that

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the defendants might have procured a light from the *choola* that was in her mother's house, and burnt the papers. And besides herself, Kassee Baboo, her mother's adopted son, and Nitranund Mahanty, her mookhtar, were complainants in the case, and charged the prisoners with killing her mother.

"With the above deposition of Musst. Daina Die, the darogah furnished a report, dated the 31st December, intimating that on the information given by her he had apprehended the above-named parties. On the 2nd of January he reported that Fuqeer Doss, who, it afterwards turned out, had been apprehended since the morning of the 30th December, had confessed being implicated with nine others in the murder of Chundramadie Chowdraine, and between the 2nd and the 9th of January, the whole of the prisoners, Nos. 6 to 16, were forwarded to the magistrate, with the confessions said to have been made by them before the darogah, as detailed below.

"Confession of Fuqeer Doss, (prisoner No. 6,) taken before the darogah, on the 2nd January 1852, between the hours of 6-30 A. M., and 12 meridian.

"I am employed as *surburakar* of mouza Doobsahae on the part of Nurhurry Chowdry. On Monday, the 16th of Poos, at three *ghurries* of the night, Nursing Naik, paik, called me saying that Nurhurry Chowdry had sent for me, and I accompanied him to the Chowdry's house, where I saw Sreemunt Dey, Purikhit Dey, Juggoo Naik and Rash Barreek, of mouza Koosera, Rughoo Dhul, of mouza Purpera, and two persons, whose names I don't know, from mouza Cheerkola, sitting with Nurhurry Chowdry and Akhee Baboo, and on my asking Nurhurry Chowdry why he sent for me, he said, because Chundramadie Chowdraine was living, Nitranund Mahanty, her naib, was perpetually getting up cases against him, and putting him to all sorts of unnecessary expense, and he could put up with it no longer; that if he killed her, he was the lawful heir to the estates and would get possession, and he was, moreover, so scandalized by Nitranund Mahanty's intrigues with Chundramadie, he was ashamed to show himself anywhere, as every one laughed at him: and he told me to accompany him to kill her. On hearing this I refused to accompany him, but he told me I must, and being helpless, at six or seven *ghurries* of the night, I went with Nursing Naik, Sreemunt Dey, Purikhit Dey, and Akhee Baboo, and Nurhurry Chowdry and others, to Chundramadie's sudder door, and Nursing Naik and Sreemunt Dey got over the *chopper* of the new wall into the *mujjee bahar*, or inner court-yard, and opened the door leading into it, and likewise the sudder door, when the rest of the party, with the exception of Rughoo Dhul and myself, who remained at the sudder door, went inside and somehow broke open the door of Chundramadie's sleeping

apartment, when I heard a noise and some one cry out that she was being killed; and I and Rughoobhul became alarmed and ran away crying to our houses, and on reaching my house, observing my neighbours Indur Mahanty, Joodeshut Mahanty, Mudhoo Mahanty, and Sheikh Dulloo, paik of Nitrarund Mahanty, who had come out of their houses on hearing the noise, sitting by the verandah of my house, I was afraid to enter it, and concealed myself in my garden under the eaves of the house, until Indur Mahanty and the others went to Chundramadie's house. Next morning Nurhurry Chowdry's servant, Lokee Barreek, came and called me to go to the Chowdry's house, as his wife was taken with pains in her stomach, and at the time Brajoo Doss of Purpera and Buggee Geer Burooah also called me, and we went together, they to the Chowdraine's and I to Nurhurry Chowdry's house, when Akhee Baboo came out and informed me that Chundramadie Chowdraine, whom we went to kill the previous night, was still alive; that Punchoo Jenna, chowkeedar, had gone to give information at the thauna, and he told me to accompany him, Akhee Baboo, to the thauna, and say some one had killed her, and as we were proceeding there with Pooree Naik, we met you (the darogah) by the Tal Pookree, and Akhee Baboo informed you that the Chowdraine had been beat by dacoits, and though still alive was yet in a very hopeless state, and could not drink; and Punchoo Jenna, chowkeedar, having said, on your asking him, that Akhee Baboo was the person he suspected, you apprehended him and me, and searched my house.

"And on being next asked, what advantage he and the other persons, besides Nurhurry Chowdry and his brothers, who expected to get possession of Chundramadie's property, would derive by killing her? he replied,—I, being a servant of Nurhurry Chowdry, went with Nursing Naik and the others at his bidding, but derived no benefit by doing so; and Nursing and the others may have got money from Nurhurry Chowdry and Akhee Baboo. Nursing Naik is *chatteal* of Nurhurry Chowdry and his brothers and went by their order, but Sreemunt Dey and the others are not his servants, and if they did not get money I do not think they would have gone. I did not previously consult with Nurhurry Chowdry and the others to kill the deceased. On Thursday the 12th Poos, Nurhurry Chowdry returned from Balasore, and I went to see him that night; and as I was leaving him he told me to come the next morning, and bring Sreemunt Dey along with me. On my going the next morning with Sreemunt Dey, Nurhurry Chowdry said to Sreemunt that the Chowdraine was very shortly to be killed, according as he had before told him, and Sreemunt Dey agreed

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and said it should be effected on the following Monday and we then went away. And on Monday night I was called, and we went and killed the deceased. I was at the door with Rughoo Dhuil, and did not see if the others had any light after they went inside the house: they took none in with them. Sreemunt Dey, Rash Barreck, and the two persons from Chircola, each had a stick in his hands, and Nursing Naik had a stick and an axe; the rest were unarmed. Whether the axe belonged to Nurhurry, Dwarkee, or Akhee Baboo, I know not, but it belonged to one of the three. Next morning at Nurhurry Chowdry's house, I asked Nursing Naik in what way and by whom Chundramadie was killed? and he told me that Juggoo Naik, Rash Barreck, Purkhit Dey, and the two persons from Chircola, held her hands and legs and waist, and he and Sreemunt Dey put their feet on her neck and chest, and Nurhurry Chowdry and Akhee Baboo stood in the house looking on.

"And on being further asked why he stated that he remained at the outer door of the house when Deb Dey deposed that he and Dwarkee Baboo went into the *mujjee bahar*, or inner courtyard, and that on Deb Dey's asking who was there, he and Dwarkee Baboo seized hold of him, and pulled him in to the north house, and there tied his mouth with a cloth, and sat on him, while the others broke open Chundramadie's door? he replied,—I did not go into the house. I and Rughoo stood at the door, and I don't know why Deb Dey says I apprehended and sat on him. I and Rughoo brought away no property with us. No one but the eleven persons above-named accompanied us, Dwarkee Baboo, Kanoo Baboo, Dey Doss, Hurry Doss, Gocool Purera and Fuqeer Doss, of Doobsahae, did not go. I make the above confession voluntarily.

"*Confession of Dwarkeenath Doss alias Dwarkee Baboo, (prisoner No. 15,) taken before the darogah, on the 2nd January 1852, between the hours of 5 and 10 p. m.*

"I did not kill Chundramadie Chowdraine. On Monday, the 16th of Poos, at six *ghurries*, or about 10-30 A. M., I went to mouza Doobsahae, the zemindaree of my deceased brother Doorbanund Doss, to inquire into the loss sustained by drought, accompanied by Fuqeer Doss, *surburakar*, and Dhooroob Doss, *ameen*, and on the following day, at about 4-30 P. M., Fuqeer Doss said, that Akhee Baboo had returned from Balasore, and as he and Nurhurry Chowdry would be at home, he was going to see them. I then said to him that he had only come with me the day before, and asked him the cause of his returning, and he replied that Nurhurry Chowdry had arranged to kill the Chowdraine, and told me if I was to go, to accompany them; but I refused, and he went to the Chowdry's house. The next day,

Tuesday the 17th, at three *ghurries* of the day, Lokee Barreek, servant of Nurhurry and Akhee Baboos, came and told me that dacoits had killed the Chowdraine the previous night.

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"And on being interrogated by the darogah, he stated further, as follows:—About a month ago, Fugger Doss came to my house, and called me in the name of Nurhurry Chowdry, and on going with him to Akhee Baboo's bungalow, he, (Fugger Doss,) and Nurhurry Chowdry and Akhee Baboo, told me that Chundramadie was always annoying them by getting up cases against them, and putting them to expense, and they would put a stop to her doing so by killing her; but I told them I would not accompany them, and went home, and on Sunday, the day before she was killed, at one *puhur*, or five *ghurries* of the day, Fugger Doss came and told me that Nurhurry Chowdry had sent for me, and they both told me to remain at home and not go to Doobsahae, and that they in three or four days would kill the Chowdraine, but I paid no attention to what they said, and that day went to Doobsahae.

"And on being further asked how he stated that he was at Doobsahae, when Deb Dey had deposed that he with Fugger Doss and others, tied his mouth with a cloth and sat upon him? he replied,—I was not at home on the night of the 16th Poos; I went the previous day to Doobsahae, and I did not sit on Deb Dey, why he says so, I know not. Nurhurry Chowdry, Akhee Baboo and Fugger Doss did not say whether they would kill Chundramadie themselves or get others to do so. Chundramadie Chowdraine, deceased, was the wife of my father's eldest brother, and Nurhurry Chowdry and Akhee Baboo are my cousins. I and Nurhurry Chowdry and Akhee Baboo have for four years had all sorts of quarrels with the deceased about the zemindaree, and have had cases in court connected therewith.

"*Confession of Rash Barreek, (prisoner No. 7,) taken before the darogah, on the 3rd of January 1852, between the hours of 7 and 11 A. M.*

"On the 15th of the month of Kartick, Nurhurry Chowdry, Fugger Doss, Nursing Naik and Sreemunt Dey, four persons, came to my house, and said that as Chundramadie Chowdraine was constantly putting them to expense, and involving them in all sorts of cases in court, they had resolved to kill her, and put a stop to the expenditure, and get possession of the zemindaree, *dhan* and other property, and on hearing this Nursing Naik observed, that it was the rainy season, and they could not then get people for the purpose, as every one was engaged in their fields; and he said, let us go to Doobsahae, and get four or five persons from that place to kill her. Nurhurry told me to remain at home and he would go to Doobsahae and return, and let me know the result of his visit there. Nurhurry Chowdry

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and Nursing Naik then went to Doobsahae and returned the following day, when Nursing Naik told me that they had been unsuccessful in getting people at Doobsahae, and they would kill her at some future time, and at about 9 o'clock, on Thursday the 12th Poos, Nurhurry Chowdry, Nursing Naik, Sreemunt Dey, Purikhit Dey, Rughoo Dhul, Fuqeer Doss, Akhee Baboo and Juggoo Naik, residents of Koosera and Buddeah, and Nursing Dey, and another person, whose name I do not know, from mouza Barra Batteeah, zillah Midnapore, collected under some trees near my house, whence Nurhurry Chowdry sent Nursing Naik to fetch me; and on my going, he told us that the Chowdraine was then to be killed as had been previously arranged; that he would give rupees ten to Sreemunt Dey, rupees five to Nursing Naik, rupees three to Purikhit Dey, rupees five to Fuqeer Doss, rupees three to Rughoo Dhul, rupees two to Juggoo Naik, rupees two to me, Rash Barreek, and rupees ten to Nursing Dey and the person with him, and when I and Nursing Naik and Sreemunt Dey asked for the money, he told Nursing Naik and Fuqeer Doss, that as they were his servants, he would afterwards give them their money, and to the rest he said that he would deduct the several amounts from the *dhan* and money due by them to him, and pay cash to those who owed nothing; and having arranged to kill her on Monday night, the 16th Poos, we all went home, having first been told to assemble at two *ghurries*, about 7 p. m., on the night appointed, near the tank to the north of Nurhurry Chowdry's house, and having been called by Nursing Naik at 9 p. m., on Monday night, I accompanied him to the said tank, and saw Fuqeer Doss and the above-named persons, and having sat and smoked there, we all, at about 2 o'clock, proceeded to Chundramadie's door, when Nursing Naik and Sreemunt Dey scaled the wall and got into the inner court-yard and opened both the door of it and the outer door, and all entered, when Sreemunt Dey took the axe from Nursing Naik, and broke the chain of the door in which Chundramadie was sleeping, and Nurhurry Chowdry, Akhee Baboo, Nursing Naik, Purikhit Dey, Sreemunt Dey and Nursing Dey, of Barra Batteeah, and another person went inside, and I and Juggoo Naik, Rughoo Dhul and Fuqeer Doss remained at the court-yard door, where we heard them beat the deceased, who told them to take all she had, and not kill her; and she cried out *oh mah! oh mah!*, and after the expiration of two *ghurries* ceased to make a noise, and Nurhurry and the others came out from the house, and as we were all absconding, Fuqeer Doss asked Nurhurry if they had killed Chundramadie, and he replied in the affirmative. We all then went to our homes, and I was apprehended yesterday by the *thanna jemadar*.

"On being further asked what part he and the others took in killing the deceased? he replied,—Akhee Baboo and Nursing Chowdry placed their feet on the deceased's neck, and Nursing Naik and Sreemunt Dey laid hold of her two hands, Purikhit Dey her waist, and Nursing Dey and the other person from Barra Batteah, her feet, and the two first killed her by pressing her neck with their feet. The moon had set when we went to the deceased's house. I witnessed the above particulars from the light of a fire-brand or *chunkattee* which Nursing Naik held in one hand while he laid hold of the deceased's waist with the other. Nurhurry Chowdry told them not to use any weapons, but to kill the deceased by pressing her neck with their feet and hands, in order that they might give out that she died of *sunee pāt* (cold,) and if they used weapons they would leave marks, and they would not be able to conceal the cause of her death. None of us brought away any property or zemindaree papers. I did not get the money Nurhurry Chowdry promised me, and I do not know when Sreemunt Dey and the others got their money. The axe which Nursing Naik had was his own property; only Nursing Naik had an axe, Fuqeer Mahanty (Doss) and the two men from Barra Batteah had each a stick; the others had no weapons. And on being asked if Dwarkee Baboo, Kanoo Baboo, Dey Doss, Hurry Doss, Fuqeer Doss, Gocool Purerra, and Kissub Dulal of Doobsahae accompanied them, he replied,—I only saw Kanoo Baboo out of the said persons going to deceased's house, while returning from it, and he returned and accompanied us. I cannot identify the two persons, from mouza Barra Batteah not having seen them before. I saw Akhee Baboo break open the chest with the axe, and Nurhurry Chowdry took out the papers and set fire to them. I did not see who took the small box.

"Confession of Rughoo Dhul, (prisoner No. 8,) taken before the darogah on the 3rd of January 1852, between the hours of 5 and 10 P. M.

"On Monday, the 16th Poos, at two *ghurries* of the night, or about 7 P. M., while I was engaged in my house sewing a bullock pad, Sreemunt Dey of Koosera came and told me he had something to tell me; and I went to Rash Barreek's house, where I saw Nurhurry Chowdry, Akhee Baboo, Dwarkee Baboo, Rash Barreek, Juggoo Naik, Purikhit Dey, Nursing Naik and Lokee Barreek, of mouza Koosera, Fuqeer Doss of Buddeah, and Nursing Dey and another person, whose name I don't know, from Barra Batteah, Midnapore; and I and Sreemunt Dey sat down by them, when Nurhurry Chowdry, Akhee Baboo and Dwarkee Baboo told me that Chundramadie Chowdraine's naib was always harassing them, by getting up cases against them, and that they were going to kill the Chowdraine, and get possession

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of her zemindaree, *dhan*, &c., and they had sent for me to accompany them and would give me four rupees, and on my objecting, they said they would beat or kill me if I did not go, and, being helpless, I accompanied them at about 10 o'clock at night to Chundramadie's sudder dobr, when Sreemunt, Dey and Nursing Naik got over the *chopper* and went into the *mujjee bahar*, the door of which, as well as the sudder door, they opened and let in all the others, and I and Fuqeer Doss followed into the *mujjee bahar*; and finding that the door of Chundramadie's sleeping apartment was fastened on the inner side, Nursing Naik said he would fetch an axe, and a *chunkattee* to make a light, from Nurhurry Chowdry's house; and he and Lokee Barreek opened the south door of the deceased's house, and went and brought an axe and fire-brand from Akhee Baboo's house, and came with Dey Doss of Koosera to the door of the *mujjee bahar* where we were. Sreemunt Dey then took the axe from Nursing Naik's hand and broke the chain of the deceased's sleeping apartment, and Nurhurry Chowdry and Akhee Baboo and the others went inside, and Lokee Barreek lighted a light (called *chunkattee*) from the fire-brand which was in Nursing's hand, and Purikhit laid hold of the feet, and Sreemunt Dey and Nursing Naik the hands of Chundramadie, and struck her on her chest and neck with their fists, and Nurhurry Chowdry and Akhee Baboo sat on her neck; and on her crying out mother! mother! Nurhurry Chowdry and Akhee Baboo pinched her wind-pipe and her cries ceased. I and Fuqeer Doss were standing in the court-yard when I saw this. All then came out of the house; and as I and Fuqeer Doss were absconding with the rest, Fuqeer Doss asked, whether they had killed the Chowdraine, and Nurhurry replied, that they had done so, and taken her papers and burnt them, and while we were proceeding by the *bheel* to the north of the house, a hue and cry was set up at the Chowdraine's house, and we all separated and went to our respective houses, and I was yesterday apprehended by the jemadar.

"On being interrogated by the darogah, he further stated— I saw the parts taken by the different persons when they went into the house, from the light of the *chunkattee*, while I was standing in the court-yard. I did not ask Nurhurry Chowdry, Akhee Baboo and Dwarkee Baboo, for the four rupees they promised me, and they did not give them to me. They promised Purikhit Dey rupees five, Sreemunt Dey rupees ten, Juggoo Naik rupees four, and Nursing Dey and another person, from mouza Burra Batteeah, rupees five each; but whether they gave them the money or not, I know not. Nursing Naik, Lokee Barreek and Fuqeer Doss, being servants of Nurhurry Chowdry and the Baboos, were not promised anything; and Rash Bar-

reek was promised a remission from his rent. Neither I nor those with me brought away property or the box containing *fysalas* and zemindaree papers. When we were going to the Chowdraine's house, Nurhurry Chowdry and Akhee Baboo said if they made use of weapons to kill the Chowdraine they would be suspected, but if they strangled her they would say that she had died from cold or the bite of a snake. Nursing Naik, Fuqeer Doss and Nursing Dey had each a stick—none of the others had any weapons. I don't know where Nursing Naik has placed the *koolhuree*; it belonged to Akhee Baboo.

"And on being asked if Kanoo Baboo, Gocool Purerra, Kissub Dulal, Hurree Doss and Fuqeer Doss went with the others to kill the deceased, he stated, they did not.

"And being further questioned, whether he and the others had previously consulted to kill the deceased, he replied,—four or five days before the end of Kartick, Sreemunt Dey came to my house and said Nurhurry Chowdry, Akhee Baboo and Dwarkee Baboo had said they would kill the Chowdraine, and asked me if I would go; and on my refusing, he said I would have to go, and went away; and he again called me, and I went with him, and Nursing Naik and others to kill her.

"*Confession of Juggoo Naik, (prisoner No. 10.) taken before the darogah, on the 4th January 1852, between the hours of 8 and 11 A. M.*

"Seven days ago, on Monday night, at about 9 o'clock, as I was leaving my house to go to my master's, Raj Narain Chowdry's, *bassa ghur*, Sreemunt Dey came to my house and told me Nurhurry Chowdry had sent for me to pay my rent; I told him that my brother Nubeen Naik would go and settle that; but he said he had called me, and I must go. I accompanied him to some trees, near Rash Barreek's house, and there saw Nurhurry Chowdry, Akhee Baboo, Nursing Naik, Rughoob Dhul Fuqeer Doss, Rash Barreek, and Purikhit Dey, of Koosera and Buddeah, and Nursing Dey, another person from Burra Batteeah, zillah Midnapore, and I and Sreemunt Dey joined them, and Nurhurry Chowdry told me that Chundramadie Chowdraine would not give him possession of her zemindaree, and that Nitranund Mahanty, who was in possession of it, was always involving him in great expense; and if he killed the Chowdraine, he would get possession of her zemindaree, *dhan*, &c., and put a stop to the expenditure, and he had therefore sent for me to accompany him to kill her; and he promised to make a remission in the amount of my rent to the extent of rupees five, and after sitting there some time we went at seven *ghurries* of the night towards Chundramadie's house, and when we had approached near to it, her servants Deb Jenna and Deb Dey, according to custom, came to the door and called out, (to let people know

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they were watchful) and then closed the door with the chain on the inner side, and after they had gone into the house, we all went and sat for a short time in the *dhan* granary, and afterwards Sreemunt Naik (Dey) and Nursing Naik got over the *chopper* into the inner court-yard, and opened the door of it and likewise the door of the principal entrance, and came and told us that the door of Chundramadie's sleeping apartment was shut, and on this, Nursing Naik said that he would get a *koolharee* and *chunkattee* from Dai Doss, who was sleeping in Akhee Baboo's house, and he went and brought them, and all entered the inner court-yard, where Nursing Naik lighted the *chunkattee* from the *choola*, or chafing-dish, in the east verandah, and Sreemunt Dey broke open the door of her sleeping apartment, and they all entered, with the exception of myself, Fuqeer Doss, Rash Barreek and Rughoo Dhul, who stood at the court-yard door. Nurhurry Chowdry and Akhee Baboo went inside, and Nursing Naik and Purikhit Naik (Dey) laid hold of the Chowdraine's feet, and Nursing Dey and the other person from Burra Batteenh her two hands, and Sreemunt Dey, who had hold of her by the hair of her head, placed his hand over her mouth, while Akhee Baboo pressed down her chest with both his hands; and on the Chowdraine's telling them to take all she had, and spare her life, Nurhurry Chowdry put his foot on her neck and pressed it down, and she gave a groan and afterwards remained silent. Seeing this, I, Rash Barreek, Rughoo Dhul and Fuqeer Doss, being at the *mujjee bahar* door, went to the sudder door, and when the others came out of the house, two *ghurries* afterwards, we all absconded to our own houses, and the day before yesterday I was apprehended.

"And being further interrogated, he said,—I saw what the others were doing inside the house, while I was standing at the *mujjee bahar* door from the light of the *chunkattee*. I have not received the remission of rent promised me by Nurhurry Chowdry, and I don't know how much was given to the others, but Nurhurry Chowdry told me he had given them their money. None of us brought away the box, with the papers or other property. I did not go inside the house, and did not see who broke open the chest and burnt the papers; we had no weapons with us; only Nursing Naik took the *koolharee* from Akhee Baboo's house. No one consulted with me before the occurrence to kill the Chowdraine.

"Kanoo Baboo, Dai Doss, Hurree Doss, Fuqeer Doss, Kissub Dulal, Gocool Purerra and Dwarkee Baboo did not go with the others. I do not know where Nursing Naik place the *koolharee*. Deb Jenna and Deb Dey were sleeping in the north house. When we went into the *mujjee bahar*, they asked who we were, and some one went and apprehended them, but I did not see who did so.

" *Confession of Purikhit Dey, (prisoner No. 9) taken before the dargah, on the 4th January 1852, between the hours of 5 and 9 P. M.*

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" On Monday night, the 16th Poos, at 9 o'clock, I went to sleep, and at about 10 o'clock Nursing Naik, Benode Doss and Lokee Barreek came and called me, saying that Nurhurry Chowdry, Akhee Baboo and Dwarkee Baboo had sent for me, and they took me to the Baboos' *bassa ghur*, and not finding them there, they said, they were sitting at Rash Barreek's house, and told me to go there, and on my objecting to do so, Benode Doss and Nursing Naik took me forcibly, and I there saw Nurhurry Chowdry, Dwarkee and Akhee Baboos, also Fugger Doss, Rughoo Dhul, Sreemunt Dey, Rash Barreek and Juggoo Naik, inhabitants of Koosera and Buddeah, and Nursing Dey of Barra Batteeah, Midnapore, and Mughunee Jenna of Chircola; and I and Benode Doss, Nursing Naik and Lokee Barreek sat down with them; and on Nurhurry Chowdry's demanding rent from me, I said I would give it next day. It was very late and I was going home, and I got up to go, when Nursing Naik and Benode Doss brought me back, and Nurhurry Chowdry and Akhee Baboo said that Nitranund Mahanty, on the part of Chundramadie Chowdraine, was always getting them into trouble and putting them to great expense by getting up cases against them, and that if they killed the Chowdraine, they would get possession of all her property and put a stop to those expenses, and they told me to accompany them and they would give me rupees five. I then sat with them, and at seven *ghurries*, or about 11-15 P. M., we all went to the bamboo jungle in front of the Chowdraine's house, at which time Deb Jenna and Deb Dey came out of the house and called out twice at the sudder door, and then went inside and closed it, and retired to rest, and one *ghurree* afterwards Nursing Naik and Sreemunt Dey got over the wall, and opened the doors of the inner court-yard and principal entrance, and came to the place where we were sitting, and reported that the door of the apartment in which the Chowdraine was sleeping was fastened inside with a chain, and asked how the chain was to be cut. And on this, Akhee Baboo told them to go to his house, and get an axe from Dai Doss, and Nursing Naik and Lokee Barreek went by the Chowdraine's *kirkhee*, or back door, and brought a *koolharee* and some *chunkattee*, and they then all entered the *mijjee bahar*, or inner court-yard, and Nursing Naik lighted the *chunkattee* at a *choola* in the south verandah, and Sreemunt Dey broke the chain of the door with the *koolharee*, or axe, and they all entered the Chowdraine's sleeping apartment, when Sreemunt Dey held her two hands, Nursing Dey her two feet, and Mughunee her waist, and Nurhurry Chowdry and Akhee Baboo seized

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hold of her neck and squeezed it with their hands, and also placed their feet on it, when she called out to them to take all her property and spare her life, and Nurhurry Chowdry then pressed her neck with great force with his foot, and she gave a groan, and ceased to make further noise. And I commenced crying and retired, and stood in the court-yard, and remained there about one *ghurree*, or forty minutes, when they all came out, and we all absconded to our own houses. The next morning at about 7 o'clock, I asked Nurhurry Chowdry and Akhee Baboo for the five rupees, and they told me they would give it in two or three days, and I returned home.

" Besides Nurhurry Chowdry, Akhee Baboo and the others (above indicated), Nursing Naik seized the Chowdraine by the hair, and I and Rash Barreek, Juggoo Naik and the others stood and looked on. On Nurhurry and Akhee Baboo's squeezing her neck she groaned and expired, and I absconded. Nursing Naik was promised rupees five, Lokee Barreek rupees five, Sreemunt Dey rupees ten, Rughoo Dhul rupees five, Fuqeer Doss rupees ten, Juggoo Naik rupees five, Rash Barreek rupees five, but whether they got the money or not, I know not. Benode Doss was not promised anything, because he was Nurhurry Chowdry's *surburakar*, and nothing about money was said to Nursing Dey and Mughunee Jenna. Nursing Naik took away the *koolharae*, but where he placed it I know not. As they were going to the Chowdraine's house, Nurhurry Chowdry told them not to wound her with any weapons, as they would leave traces behind, but to throttle her, in order that it might be said she died from cold, &c. I did not see who broke open the chest, or took the small box, and burnt the papers. None of us brought away any property from the house. We had no weapons. Nursing Naik alone had a stick.

" Dai Doss and Kanoo Baboo of Koosera, and Fuqeer Doss, Hurry Doss, Gocool Purerra, and Kissub Dulal of Doobsahae, did not accompany us; Dey Doss did not go with us; when Deb Jenna and Deb Dey, who were inside the house, asked who we were, Benode Doss and Lokee Barreek went into the house in which they were, and sat on them. I don't know if Nurhurry Chowdry and the others previously consulted to kill Chundramadie Chowdraine; I only went the night Benode Doss and others called me.

" I was forcibly taken with the others. I derived no advantage by the Chowdraine's being killed. I did not get the rupees five that were promised to me.

" *Confession of Lokee Barreek, (prisoner No. 11,) taken before the darogah, on the 5th of January, between the hours of 8 A. M. and 1 P. M.*

" At 9 o'clock, on Monday night, of the 16th Poos, Fuqeer Doss came and called me and Benode Doss, my neighbour,

saying, that Akhee Baboo had sent for us, and we went with him to Akhee Baboo's *bassa ghur*, but not finding him there, Fugger Doss said he might be at Rash Barreek's house, and on going there we saw Rash Barreek, Akhee Baboo, Nursing Naik, Sreemunt Dey, Juggoo Naik, Purikhit Dey of Koosera, and Rughoo Dhul of Poorsuttumpore, and two persons from Barra Batteeah sitting together there, and on our joining the party Nurhurry Chowdry and Akhee Baboo said that Nitranund Mahanty was always getting up cases against them, and putting them to expense; they would put an end to it by killing Chundramadie Chowdraine, and get possession of her zemindaree, *ghan*, and other property; and after smoking, at a little before 11 o'clock, we went to kill Chundramadie Chowdraine, and sat under some bamboo trees in front of the sudder door of her house. At this time her servants Deb Jenna and Deb Dey came to the door and called out twice, and afterwards closed and fastened the door on the inner side with a chain. And about forty minutes afterwards, Nursing Naik and Sreemunt Dey went to the sudder door, and returned and said all was quiet inside; the inmates had all gone to sleep: and they all then arose and went up to the door, when Nursing Naik and Sreemunt Dey got over the wall and opened the doors of the inner court yard and of the principal entrance, and they all entered, and Nurhurry Chowdry, having observed that the door of Chundramadie Chowdraine's sleeping apartment was fastened inside by a chain, told some one to fetch an axe from Akhee Baboo's house to break it open, and Nursing Naik opened the Chowdraine's *kirhhee*, or back-door, and went and fetched an axe and a *chunkattee* from Akhee Baboo's house; and Sreemunt Dey took the axe from Nursing Naik's hand and broke open the door, and Nursing Naik lighted the *chunkattee* at a *choolu* and gave it to me, and I went into the apartment and stood there, while Purikhit Dey and Rash Barreek and two persons from Barra Batteeah seized Chundramadie by the waist, and Sreemunt Dey laid hold of her hair and held her down, and Nurhurry Chowdry, Akhee Baboo and Nursing Naik pressed down her chest and neck; and on their doing so, she told them to take her property but spare her life; that on this Nurhurry Chowdry told her to be silent, and Akhee Baboo and Nursing Naik seized her by the throat and squeezed it with their hands, and she twice exclaimed mother! mother! and ceased to make a noise, but Akhee Baboo and Nursing Naik, doubting whether she was dead or not, pressed her neck down with their feet, and she expired. Nursing Naik then took the *koolharee* and broke open the chest, and they all looked into it, and saw it contained no property except a small box, which Nurhurry took into his hands; and they all came away, having first placed a *ruzzai* or

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coverlet over the Chowdraine, and when we had reached the *bheel* to the north of her house, Deb Jenna and Deb Dey gave the alarm, and we all absconded to our own houses. Next day at 3 P. M., I went to Nurhurry Chowdry's house, and heard that the darogah had arrived and was investigating the case, and I returned home, and was yesterday apprehended.

"I am in the employ of Nurhurry Chowdry, and receive the sum of rupees six from him yearly. Nurhurry Chowdry took the small box to his house; where he has placed it, I know not. Nurhurry Chowdry told us not to take any property, lest it should lead to our detection. Nursing Naik took the *koolharee*; I don't know where he placed it. Nursing Chowdry, Akhee Baboo and Nursing Naik took the *talputro* and papers out of the box, and threw them on the ground. I did not see who burnt them. Purikhit Dey alone had a stick in his hand, the others had no weapons: Nurhurry Chowdry told us not to use any weapons, as they would leave marks, but to strangle her with their hands, which would leave no marks, and they could say that she had died of some disease. I was not promised any money for going, and I did not hear Nurhurry Chowdry and Akhee Baboo promise any to the others. I, Fugeer Doss, Benode Dey and Nursing Naik are *ryots* and servants of Nurhurry Chowdry and Akhee Baboo, and they threatened to beat us if we did not go, so we went; they may have given Rughoo Dhul, Purikhit Dey and Sreemunt Dey and the other prisoners money for going. I do not know if Nurhurry Chowdry and Akhee Baboo consulted previously with the others to kill the Chowdraine; they did not consult with me. At the time we all went into the *mujjee bahar*, Deb Jenna and Deb Dey asked who we were, and Rughoo Dhul and Fugeer Doss went into the house where they were and sat on them. No one went besides the above persons. Dwarkee Baboo, Kanoo Baboo, Dai Doss, Kissub Dulal, Gocool Purerra, Hurree Doss and Fugeer Doss did not accompany us. I have made this confession voluntarily.

"*Confession of Benode Doss, (prisoner No. 12,) taken before the darogah, on the 5th of January 1852, between the hours of 6 and 10 P. M.*

"On Monday night, the 16th of Poos, at one *ghurree*, or a little before 7 P. M., Fugeer Doss of Buddeah came and called me, and my neighbour Lokce Barreek, saying that Akhee Baboo had sent for us, and we accompanied him to Nurhurry Chowdry's house, where we found Nurhurry and his brothers, Akhee Baboo, Kanoo Baboo and Dwarkee Baboo sitting in their verandah with Dai Doss of Koosera, and I and Lokce Barreek and Fugeer Doss sat down by them, when Fugeer Doss said, that Nitranund Mahanty, the naib of Chundramadie, was always quarrelling with and putting the Chowdry and Baboos to great

expense, and they were going to kill the Chowdraine. On hearing this I refused to go, but Fuqeer Doss told me to accompany him; and I and Nurhurry Chowdry, Akhee Baboo, Kanoo Baboo, Dwarkee Baboo, Fuqeer Doss, Lokee Barreek and Dai Doss, all went together to Rash Barreek's house at Koosera, when Rash Barreek said Sreemunt Dey, Nursing Naik and Purikhit Dey had not come. Nurhurry Chowdry then told Fuqeer Doss to call them, and Fuqeer Doss took me and Lokee Barreek with him to Sreemunt Dey's house, and Sreemunt told me and Lokee to go and call Purikhit Dey and Nursing Naik, and take them to Rash Barreek's house, and he and Fuqeer Doss would call Rughoo Dhul; and as I and Lokee Barreek were going to Nursing Naik's house, we met him and Purikhit Dey on the road, and took them with us to Rash Barreek's house, where we found Sreemunt Dey, Fuqeer Doss, Rughoo Dhul and Juggoo Naik, and two persons from Barra Batteeah, whose names I do not know. We then sat and smoked, and a little before 11 o'clock went to kill the Chowdraine, and sat under some bamboo trees in front of her house, while Nursing Naik and Sreemunt Dey went to see if all was quiet in the house; and they returned and said that Deb Jenna and Deb Dey had eat their rice, and were washing their hands. And at this time Deb Jenna and Deb Dey came outside the door, and called out twice, and then again went inside and fastened the door with a chain, and we all got up and went to the door, when Nursing Naik and Sreemunt Dey scaled the wall and opened the doors of the inner court-yard and principal entrance, and we all went into the yard leading to the sleeping apartment, when Nurhurry Chowdry remarked that the door was fastened inside, and told some one to fetch an axe from Akhee Baboo's house, and on hearing this Nursing Naik and Lokee Barreek opened the Chowdraine's *baree* door, and brought an axe and some *chun-kattee*, and Lokee Barreek lighted the *chun-kattee* at the Chowdraine's *choola*, and brought it to the door of her sleeping apartment, the chain of which some one broke open; and the Chowdraine then made an exclamation of alarm, and Nurhurry Chowdry, Dwarkee Baboo, Kanoo Baboo and Akhee Baboo, Dai Doss, Nursing Naik, Sreemunt Dey, Purikhit Dey, Lokee Barreek and Juggoo Naik entered the Chowdraine's sleeping room; and Deb Jenna and Deb Dey, who were in a house facing the north, having at this time inquired who was there, the two persons from Barra Batteeah and Rash Barreek went and sat on them. And Fuqeer Doss and Rughoo Dhul kept watch at the *sudder* and *mujjee* doors, and Nurhurry Chowdry, Akhee Baboo and Dwarkee Baboo seized hold of the Chowdraine and pressed down her chest, and Nurhurry Chowdry placed his foot on her neck and stood on it, when she gave a groan and ceased to make any

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noise. And one *ghurree*, or forty minutes afterwards, they all came out of the house, and I accompanied them, as did also Rash Barreek and the others who went to silence Deb Jenna and Deb Dey, and some one who was bringing away a *lotah* was told by Nurhurry Chowdry not to take it, as it would lead to their detection, and on hearing this, Fuqeer Doss placed it in the Chowdraine's house, and we all went home by the *bheel* to the north of her house. The next day I went to ascertain whether the Chowdraine was dead or not, and returned home, and afterwards you (the darogah) came and sent the body to Balasore.

"And on being further asked what the others did when Nurhurry Chowdry, Akhee Baboo and Dwarkee Baboo sat on the Chowdraine's chest? he replied,—Nursing Naik and Sreemunt Dey held her by the waist, and Purikhit Dey, Juggoo Naik, Kanoo Baboo and Dai Doss held her feet, and Lokee Barreek stood inside the house holding the light. Although I was standing at the *mujjee* door, I saw what the others did inside the Chowdraine's apartment from the light of the *chunkuttee*. I did not see who broke open the chest; but when they came out of the house I saw a small box in Nurhurry Chowdry's hands. I did not see who burnt the papers. Nurhurry Chowdry and the baboos took me with them because I am their servant, and whether they promised any money to Nursing Naik, Sreemunt Dey and the others, or not, I do not know, but they may have done so.

"And being asked what the Chowdraine said when Nurhurry Chowdry and the others were killing her? he replied,—she told them to take her property and spare her life; but they paid no attention to her, and Akhee Baboo stood on her chest and Nurhurry on her neck and she died. I cannot tell the cause of their strangling the Chowdraine, and not using any weapons. None of us had any weapons with us; Purikhit Dey only had a stick. The small box which Nurhurry Chowdry took was locked, and I did not see its contents. I don't know if Nurhurry Chowdry and the Baboos previously consulted with Nursing Naik and the others to kill the Chowdraine. I only went on the night of the occurrence when I was called by Fuqeer Doss. Besides the sixteen persons above-named, Gocool Purerra, Hurry Doss, Kissub Dulal and Fuqeer Doss of Doobsahae, did not go. I have made the above confession voluntarily.

"A few other questions were put to the prisoner; but as neither they nor his answers were of any importance, they have been omitted.

"*Confession of Mughun Jenna, (prisoner No. 13,) taken before the darogah, on the 6th of January 1852, between the hours of 3-30 and 8-30 P. M.*"

"In the month of Poos, nine days ago, at about half-past eight, on Monday night, Nursing Dey, of mouza Barra Batteeah, called

me from my house and took me to Sreemunt Dey's house at Koosera, where he told me to sit in the west verandah, while he and Sreemunt Dey conversed in the east verandah of the said Sreemunt Dey's house; but what passed between them I know not; and as we three were leaving the house, Fugger Doss arrived and talked with Sreemunt Dey, who afterwards told me and Nursing Dey to accompany Fugger Doss while he went to fetch Rughoo Dhul Dhoba; and I and Nursing Dey and Fugger Doss went to Rash Barreek's house and there smoked with Rash Barreek, and at about 9-40 p. m., or five *ghurries*, Sreemunt Dey, Purikhit Dey, Rughoo Dhul, Lokee Barreek, Akhee Baboo, Nurhurry Chowdry, Dwarkee Baboo, Nursing Naik, Benode Doss and two others, whose names I know not, in all eleven persons, came and joined us, and Akhee Baboo told me, Rash Barreek, Nursing Dey and Fugger Doss to accompany them to kill Chundramadie Chowdraine, and on my asking them why they were going to kill her, Akhee Baboo said, she was their enemy, and they would kill her, and we were to accompany them. And on my objecting to do so, Nursing Naik and Akhee Baboo threatened to kill me, if I did not go. Being helpless, I accompanied them, and sat under some bamboos in front of the Chowdraine's house, and Nursing Naik, Sreemunt Dey and Akhee Baboo went to ascertain if the inmates were asleep, and returned and said they could hear no voices,—that all was quiet. At this Deb Jerna and Deb Dey, servants of the Chowdraine, came outside the sudder door and called out twice and again went inside and closed the door. And at about seven *ghurries*, or 11 o'clock, we all went to the door of the house, and Sreemunt Dey and Nursing Naik got over the wall and opened the doors of the inner court-yard, and the principal entrance, and we all went in. And finding the door of the Chowdraine's sleeping apartment shut, Akhee Baboo told some one to fetch an axe from his house to cut the chain; and on hearing this Nursing Naik and Sreemunt Dey went out by the Chowdraine's *baree*, or garden door, and brought an axe and some *chunkattee*, which latter Lokee Barree lighted at a *choola* in the verandah, and Sreemunt Dey forced back the door, and cut the chain of the Chowdraine's sleeping apartment, and I, Nurhurry Chowdry, Akhee Baboo, Dwarkee Baboo, Sreemunt Dey, Nursing Naik, Lokee Barreek, Benode Doss and Rughoo Dhul entered, and on the Chowdraine's asking who we were, Sreemunt Dey and Akhee Baboo replied, that we were her enemies, and Nursing Naik laid hold of her feet, Dwarkee Baboo her waist, and Sreemunt Dey put his hands over her eyes, and Nurhurry Chowdry pressed down her chest, and Akhee Baboo put his foot on her neck and held her down, when she twice called out mother! mother! and Akhee Baboo then kicked her, and stood with all his weight on

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her neck, and she gave a groan and ceased to make any further noise. After this Sreemunt Dey and Akhee Baboo applied their hands to her nostrils to see if she was dead, and having pronounced her to be so, threw her *razzai* over her. Nursing Naik then broke open the chest with the *koolharree*, and as he was doing so, I left the room. Afterwards they all came out and absconded by the *bheel* to the north of the Chowdraine's house, and I and Nursing Dey went to our houses, and the others to theirs. * And yesterday I was apprehended by the jemadar.

" And in answer to further questions, the prisoner said, while Nurhurry Chowdry and the others above-named were engaged in holding down and killing the Chowdraine, Lokee Barreek stood by with the *chunkattee* in his hand, Benode Doss and Rughoo Dhul stood by the bed near to the deceased's waist, and I stood at the door of the house, and Nursing Dey, Purikhit Dey and Rash Barreek were engaged in holding Deb Jenna and Deb Dey, the Chowdraine's servants, in the north house; who besides were standing in the court-yard I did not see. I did not see who took the small box and burnt the papers; I came out of the house at the time Nursing Naik broke open the chest. When Sreemunt Dey came out of the house he had a cloth under his arm. Nurhurry Chowdry and the Baboos told us not to take any property as it would lead to our detection, and therefore we took none. I don't know whether the Chowdry and Baboos before consulted with Sreemunt Dey and Nursing Naik and the others to kill the Chowdraine; they did not consult with me. I don't know whether Nursing Chowdry and the Baboos gave Nursing Naik and the others any money to kill the Chowdraine or not; when I objected to accompany them on the night of the occurrence, Sreemunt Dey promised me one rupee, but he has not yet given it to me.

" Then after explaining to the prisoner that he had stated Nurhurry Chowdry and the Baboos killed the Chowdraine because they were her enemies, he was asked why he and the others went to kill her? and he replied,—I accompanied them because the Chowdry and Baboos threatened me. I don't know why Nursing Naik, Purikhit Dey and the others killed her. I did not see Gocool Purerra, Kissub Dulal, Fuger Doss and Hurry Doss, inhabitants of Doobsahac, among those who killed the Chowdraine. I make the above confession voluntarily.

" *Confession of Nursing Dey, (prisoner No. 14.) taken before the darogah, on the 7th January 1852, between the hours of 9 A. M. and 1 P. M.*

" Ten days ago, on Monday evening, I met Sreemunt Dey, who remarked to me that I had no clothing, that which I had on at the time being all torn, and told me to accompany him to fetch away some money from a female's house, and he would give me

two rupees ; I on hearing this called Mughun Jenna of Chircola, and Sreemunt Dey also told him to accompany him and fetch money from a female's house and he would give him one rupee. And I and Mughun Jenna then went with Sreemunt Dey to his house and sat there till about 9 P. M. when Fugger Doss arrived, and Sreemunt Dey sent me and Mughun Jenna with him (Fugger Doss) to the house of Rash Barreek, and went himself to call a *dhoba* whose name I don't recollect. And while I, Mughun Jenna and Fugger Doss were sitting in Rash Barreek's house, at about half past 10, Sreemunt Dey, Nurhurry Chowdry, Dwarkee Baboo, Akhee Baboo, Purikhit Dey and four or five other persons, whose names I don't know, arrived one after the other, and Nurhurry Chowdry, Akhee Baboo and Dwarkee Baboo observed that Chun-dramadie Chowdraine was their enemy and told us to accompany them to kill her ; and on my refusing to do so, they said if I did not they would kill me, and asked why I had come there if I did not intend to accompany them, and I, Mughun Jenna, Rash Barreek and Fugger Doss accompanied Nurhurry Chowdry, the Baboos and others, and proceeded, in all fifteen persons, to some bamboo trees, in front of the Chowdraine's sudder door, whence Sreemunt Dey and Nursing Naik went to ascertain if the inmates of the house were asleep, and they returned and said they heard no one talking, and that they were all asleep, when two of the Chowdraine's servants came outside the door and called out, and then went in and closed the door ; after which we all went up to the said door, and finding it shut, Nursing Naik and Sreemunt Dey scaled the wall and opened the doors of the inner yard and principal entrance, and we all proceeded to the inner yard leading to the Chowdraine's sleeping apartment, the door of which was fastened on the inner side with a chain, and Akhee Baboo told them to bring an axe from his house to cut it. Nursing Naik and Sreemunt Dey then went by the Chowdraine's *barce* door, and brought an axe and some *chunkattee*, and Nurhurry Chowdry's *bhundarie*, or khidmutgar, whose name I don't know, lighted the *chunkattee* at a *choola*, and Sreemunt Dey forced back the door and cut the chain, and all the others went into the Chowdraine's sleeping apartment with the light, while I stood on watch at the door of the north house, and on Nurhurry Chowdry, Akhee Baboo, Dwarkee Baboo and the others entering the room, the Chowdraine asked who they were, and Nurhurry replied that they were her enemies, and went and sat on her chest, while Dwarkee Baboo laid hold of her feet and Akhee Baboo held down her body, and Sreemunt Dey her head ; the others laid hold of different parts of her body, but in the confusion I did not observe what each did and where they were standing. Nurhurry stood on her throat and she gave a groan

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and expired. Nursing Naik then broke open the chest with the axe, and at this time, I left the door of the north house where I was standing, and went and stood at the sudder door; and about twenty minutes afterwards they all came out and went to their houses by the *bheel* to the north of the Chowdraine's house. I and Mughun Jenna went together to our homes and the day before yesterday I was apprehended by the jemadar.

"I saw what the different persons were doing inside the Chowdraine's house from the light of the *chunkattee* while I was standing by the door of the north house. Deb Jenna and Deb Dey were sleeping on a mat inside the north house, and did not come out through fear. I was standing on watch at the door of it; in the confusion I did not see who held them down. Nursing Naik broke open the chest. I did not see who took the small box, and burnt the papers. When they came out of the house I observed a cloth under Sreemunt Dey's arm. We took no property from the house, because Nurhurry Chowdry told us it would lead to our detection if we did. Nurhurry Chowdry and the Baboos killed the Chowdraine because they bore her enmity, and they threatened to kill me if I did not accompany them, so I went through fear. I don't know why the others went. Nurhurry Chowdry and the Baboos gave me no money for going with them to kill the Chowdraine. Sreemunt Dey promised me two rupees, but he has not given them to me; whether they gave or promised any money to the others I did not hear. Nursing Naik took away the *koolharee*; where he has placed it, I know not. Besides fifteen persons above-named, Kissub Dulal, Gocool Purerra and others did not go. I have confessed voluntarily. Nurhurry Chowdry and the Baboos did not previously consult with me to kill deceased. I went that night on the summons of Sreemunt Dey. I don't know if they before consulted with the others.

"*Confession of Kanoochurn Doss, alias Kanoo Baboo, (prisoner No. 16,) taken before the darogah, on the 9th January 1852, between the hours of 9 A. M. and 2 P. M.*

"I did not strangle Chundramadie Chowdraine in concert with Nurhurry Chowdry and the others on Monday night, the 16th Poos.

"And afterwards, on being asked if he knew that Nurhurry Chowdry and the others did so? he replied,—Dwarkee Baboo, Akhee Baboo, Sreemunt Dey and Nursing Naik killed her.

"The prisoner was then asked how he knew that the above persons killed her? and he replied—On the night in question at about 1 o'clock, Deb Jenna and Deb Dey called out that people had killed Chundramadie Chowdraine and absconded, and on hearing this, I went out of my house, and was proceeding to the deceased's house, when I saw Dwarkee

Baboo, Akhee Baboo, Nursing Naik and Sreemunt Dey, four persons, absconding by the deceased's garden-door towards Akhee Baboo's house. I saw no one but the above four persons. They had no property in their hands. I was suffering from fever that night, and could not apprehend them; they pushed me aside and went on.

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"Again, the prisoner on being asked why he denied accompanying the others to kill the deceased, when Rash Barreek, Benode Doss and Dey Doss had in their confessions stated that he went with Nurhurry Chowdry and the others, and got rupees ten as his share of the money brought away from her house, said, in the month of Aghun, Nurhurry Chowdry called Akhee Baboo, Sreemunt Dey, Dwarkee Baboo, Rash Barreek, Benode Doss, Purikhit Dey and myself, through Nursing Naik, to Rash Barreek's house by the Oolum *bheel*, when he, (Nurhurry Chowdry) Akhee Baboo and Dwarkee Baboo said, that Nitranund Mahanty, the naib of Chundramadie Chowdraine, was always harassing them and getting up cases against them, and they would put a stop to it by killing the Chowdraine and getting possession of all her zemindarees; and they told the rest of us to accompany them, and they would give to Sreemunt Dey rupees six, Nursing Naik rupees five, Rash Barreek rupees five, Benode Doss rupees five and Purikhit Dey rupees three. On hearing this, I said that the Chowdraine was my aunt; I would not go to kill her; that I had no use for her zemindarees, and I went home; and at about 8 o'clock on the night of the occurrence, Nursing Naik, Sreemunt Dey and Benode Doss came to my house and called me to accompany them to kill her, but I said she was my aunt and gave me grain and rice, &c., and I would not go with them, and they left my house. Benode Doss, Dai Doss and Rash Barreek have falsely accused me, saying that I got rupees ten, as my share of the plunder. Nurhurry Chowdry, Akhee Baboo and Dwarkee Baboo said, that they would give their own money to the above persons. The four persons I saw absconding from the Chowdraine's house had a *chunkattee* with them, which they threw away on seeing me; I recognized them from the light of it; the night was dark, Sreemunt Dey had the *chunkattee* in his hand; I did not tell any one about the previous consultation or that the above-mentioned persons called me to accompany them on the night of the occurrence. When I went to the house I only saw Deb Jenna and Deb Dey, and I with them tried to revive the Chowdraine. Panchoo Jenna and other persons afterwards came. I was the first person who went to the house.

"I did not ask the four persons whom I saw absconding from the house any questions at the time; but the next morning

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when I was going to the *bheel* to cut *dhan*, I met Sreemunt Dey in the plain to the south of the Koosera Ghur, and inquired of him who killed Chundramadie Chowdraine, and he said he did not know, and on my telling him I saw him, Dwarkee Baboo, Akhee Baboo and Nursing Naik running away, he replied, those who eat fire will ***** and went away. I was sleeping in my own house and my wife at my uncle's, Nursing Doss', house. I have no witnesses to this. I was once imprisoned in an affray case connected with Talook Koosera, in which Dewan Mahomed Hossein was the opposing party, and I, Nurhurry Chowdry and Sreemunt Dey were once forwarded to the magistrate on a charge of burglary in Chundramadie Chowdraine's house, of which we were acquitted; and I was fined rupees twenty for committing an affray with Chundramadie's people about the Doobsahae talook, and in default of payment, confined in jail.

"The confession of Fuqeer Doss, (prisoner No. 6,) taken before the magistrate on the 4th of January, corresponds in all essential points with his confession before the police. He merely stated in addition, that he went to Doobsahae on Sunday the 15th Poos, and returned to his house (at Buddeah) on the 16th, the date of the occurrence, and he more clearly stated than he had done in his Mofussil confession that Nursing Naik took the *kooharee* with him when they went to kill the deceased. He also said that he knew nothing whatever about the chest in the Chowdraine's house having been broken open and the papers taken.

"The confession of Rash Barreek, (prisoner No. 7,) made before the magistrate on the 5th of January, is almost word for word the same as that made by him before the police, saving as regards the sums of money said to have been promised by Nurhurry Chowdry to the different prisoners. He merely stated in addition that Nursing Naik procured the *chunkattee* in one of the Chowdraine's house.

"The confession of Rughoo Dhul, (prisoner No. 8,) made before the magistrate on the 5th of January, also corresponds as far as it goes, in a minute degree with his Mofussil confession, though the latter is considerably the more lengthy of the two, consequent on the questions put by the police. He, however, omitted to state before the magistrate as he had done in the Mofussil that Lokee Barreek went with Nursing by the deceased's *baree* door, to fetch the axe and *chunkattee*, or that Dai Doss returned with them, and he said, in excess of his Mofussil confession, that four persons went and sat on the Chowdraine's two servants who were sleeping in the north house.

"The confession of Dwarkeenath Doss, *alias* Dwarkee Baboo, (prisoner No. 15,) made before the magistrate on the 5th of

January, differs somewhat from his Mofussil confession, and it is in consequence here recorded in full.

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"About one month before Chundramadie was killed, I don't recollect the day or date, one morning, the prisoner Fuger Doss, *surburakar*, told me, that Akhee Baboo and others had sent for me, and I accompanied him to Akhee Baboo's house, where I saw Akhee Baboo, Nursing Naik and Sreemunt Dey, and Akhee Baboo told me that Nitranund Mahanty on the part of the Chowdraine was always harassing them and getting up cases against them, and that if they killed the Chowdraine they would be no further troubled. But on hearing this I objected to have anything to do with the matter and went home, and on Sunday, the 15th Poos at six *ghurries*, I, Fuger Doss and Dhoobroob Doss, ameen, went to mouza Doobsahae, the property of my deceased brother, Doorbanund Doss, to inquire into the loss the crops had sustained by drought, and we all remained there that day, and next morning, Monday, went with the riots to inspect the crops, and after bathing at about 4 p. m., Fuger Doss set out for Koosera, and told me to accompany him, as Akhee Baboo had returned from Balasore and it had been arranged to kill the Chowdraine, but I objected to accompany him, and he went to Koosera. Next day, at about 9 a. m., Nurhurry Chowdry and Akhee Baboo's servant, Lokee Barreek, came and informed me that the Chowdraine had been killed by dacoits; and having done so he went away, and at about 12 or 1 o'clock p. m., I was setting out for Koosera when the jemadar came and arrested me, and took me to the darogah who detained me, and on the following day questioned me, when I told him the above.

"And being interrogated by the magistrate concerning certain discrepancies in his statements, and also asked other questions, the prisoner further stated—

"I told the darogah that Sreemunt Dey and Nursing Naik were with Akhee Baboo when I was called to his house. I did not mention the name of Nurhurry Chowdry to the darogah. I stated the same before him, as I have done before the court. I do not know how the darogah happened to write the name of Nurhurry Chowdry. I did not mention it to him. Lokee Barreek came on the 17th Poos to inform me that the Chowdraine had been killed, because she was my aunt. At the time Lokee Barreek gave me the information, I understood that she had been killed. Quarrels have long existed between me and Nurhurry and Akhee and the Chowdraine about the zemindari, and I was fined rupees 20 on her complaint in an affray case, and confined in jail for fifteen days on non-payment of the fine; I was never on any other occasion apprehended or punished. I was only once consulted with about killing the Chowdraine. Doobsa-

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hae is three *cosse* distant from Koosera. I was not present, and I did not see who entered the house and killed the Chowdraine, I don't know where the box and papers have been placed. Sreemunt Dey is in no way connected with the Baboos; he is of the *Rajoo* caste, and being a robust man the Mofussil people are afraid of him. He is a *pai ryot* of Nurhurry Chowdry. I don't know if Nurhurry Chowdry and Akhee Baboo promised any money to those whom they took with them. Akhee Baboo was punished along with me on the complaint of the Chowdraine, I don't know if any of the others have been apprehended or punished.

"The Mofussil confession of the prisoner being next read to him, he said,—I mentioned the names of Sreemunt Dey and Nursing Naik, which are omitted, and did not mention the name of Nurhurry Chowdry, which is inserted in it. The rest is correct: I confessed voluntarily before the darogah but Nitranund Mahanty tutored me to mention Nurhurry Chowdry's name to the darogah, and whether I did so or not, I don't recollect. Dyarry Singh, burkundauz, is aware that he did so, but whether he will say so or not I can't tell. I have made the above confession voluntarily. I did not tell the darogah that Nurhurry Chowdry and Fuqer Doss told me not to go to Doobsahae on Sunday the 15th Poos, as the Chowdraine was to be killed. I did not object to the darogah's writing the name of Nurhurry Chowdry and omitting those of Sreemunt Dey and Nursing Naik at the time I signed my answer, because I did not notice that he had done so.

"And on the prisoner's being, again asked *in opposition to the context* of his examination whether Nurhurry Chowdry and the others consulted once or twice to kill the Chowdraine? he replied, —Nurhurry Chowdry only consulted with me in Kartick.

"The confession of Juggoo Naik, (prisoner No. 10,) made before the magistrate on the 6th of January, is, as regards the principal facts of the case, the same as that made by him before the darogah, but before the magistrate he stated that at the time Nursing Naik and Sreemunt Dey got over the wall and opened the doors, to let in the others, they brought a light from the *choola* which was inside the house, and that they all sat and smoked before entering it. And he further stated that after he got home after the murder had been committed, (his house being within call of the Chowdraine's house,) he heard Punchoo Jenna, chowkeedar, and others give the alarm that the Chowdraine had been killed, and that his brother went to his house, but he did not go there.

"The confession of Purikhit Dey, (prisoner No. 9,) made before the magistrate on the 7th of January, corresponds in most material points with his Mofussil confession. But he stated

before the magistrate that Nurhurry Chowdry and Akhee Baboo after entering the house observed that the door of the Chowdraine's sleeping apartment was closed, and that the latter told some one to go to his house and fetch an axe to break it open, instead of, as in the Mofussil, that Nursing Naik and Sreemunt Dey communicated the said information while they were sitting on the bamboos outside the house, and he said that he did not recollect how much money the different parties were promised by Nurhurry Chowdry. Also that he was apprehended on Saturday, the day he returned from Balasore, where he had been sent by the darogah with the body of the deceased.

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"The confession of Lokce Barreek, (prisoner No. 11,) taken before the magistrate on the 7th of January, differs but little from his confession made before the police, saving that in it he seldom made mention of the name of Nurhurry Chowdry, and denied that he told the darogah that he, with Akhee Baboo, sat upon or held down the deceased. He, however, said that he took the small box from the chest. He also denied having himself held the *chun-kattee*, though it is recorded in his Mofussil confession that he did do so, and stated that he was standing ten or fifteen *haths* from the others.

"The confession of Benode Doss, (prisoner No. 12,) before the magistrate on the 8th of January, corresponds generally with that made by him before the police. He, however, stated in the Mofussil that he did not know the cause of their throttling the deceased instead of making use of weapons, and before the magistrate he stated that they plotted at Rash Barreek's house to strangle her, in order that it might be said she died from cold, &c.

"The confession of Mughun Jenna, (prisoner No. 13,) made before the magistrate on the 8th of January, is in all material points the same as that made before the police. He merely in addition mentioned the name of Juggoo Naik among those he met at Rash Barreek's house.

"The confession of Nursing Dey, (prisoner No. 14,) taken before the magistrate on the 9th of January, differs considerably from that taken before the police darogah, he having stated before the magistrate that after going with the other prisoners to the bamboo trees in front of Chundramadie's house, he absconded, finding that Nurhurry Chowdry and the Baboos were going to kill the Chowdraine, and that he knew nothing about what afterwards occurred, and he denied his Mofussil confession, stating that he had told the darogah the same as he had told the magistrate, and said that the darogah beat him and wrote his examination according to the confessions of the other prisoners, instead of according to what he deposed.

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"The confession of Kanoo Baboo, *alias* Kanoochurn Doss, (prisoner No. 16,) made before the magistrate on the 12th of January, differs from his Mofussil confession, inasmuch as before the magistrate he stated that he was returning from mouza Goochgurreah and was passing Rash Barreek's house one evening in the month of Aghun, when he saw Akhee Baboo, Dwarkee Baboo, Nursing Naik, and Sreemunt Dey sitting there; and that on their calling him he joined them, and was told by Akhee Baboo and Dwarkee Baboo that they were going to kill Chundramadie; and not as he stated before the darogah, that Nurhurry Chowdry summoned him and the others, through Nursing Naik, to Rash Barreek's house, and he further stated for the first time before the magistrate that on Monday the 9th of Poos, Nursing Naik, Benode Doss and Sreemunt Dey, (the three persons by whom he said he was also called on the evening of the 16th Poos,) called him in the name of Nurhurry Chowdry to go and kill the Chowdraine; but that he refused to go, as he had done before and did afterwards, saying that she was his aunt and that he would not kill her.

"Dyaneedhee Doss, *alias* Dai Doss, Nurhurry Chowdry, Akhee Baboo, Sreemunt Dey, Nursing Naik and Hurrychurn Doss were released by the magistrate, but I nevertheless consider it necessary, in elucidation of the case, to record the purport of their examinations.

"Dyaneedhee Doss, *alias* Dai Doss, in his examination before the darogah, on the 8th of January, made the following confession:—

"In the month of Kartick last, I don't recollect the date, Nurhurry Chowdry, Dwarkee Baboo, Akhee Baboo, Sreemunt Dey, Lokee Barreek, Nursing Naik, my father Hurrychurn Doss, and myself were all assembled by Nurhurry Chowdry's, at the Koondeah *bheel*, in front of my house, when Nurhurry Chowdry, Akhee Baboo and Dwarkee said, that Chundramadie Chowdraine was always quarrelling with them and getting up cases against them, and would not give them possession of the zemin-daree, and therefore they had determined to kill her and plunder her money; and they told us to accompany them and they would give us a share of the money, and Sreemunt Dey agreed and said they would go five or seven days thence. On Monday, the 16th Poos, at two *puhurs*, or 12 o'clock at noon, Nurhurry Chowdry, Akhee Baboo, Dwarkee Baboo, Kanoo Baboo, Sreemunt Dey, Nursing Naik, Lokee Barreek, Purikhit Dey, Benode Doss and I, sat and consulted in Akhee Baboo's bungalow to kill her that night and take her money, and afterwards we went home, and at what time of the night they all went to the Chowdraine's house I know not. I slept that night in the

south compartment of Nurhurry Chowdry's house, and at 12 o'clock at night, Nursing Naik, Benode Doss and Lokee Barreek called me and said they with others had come to kill the Chowdraine, but the door of her sleeping apartment was closed and they could not get into it, and they told me to give them an axe and some *chunkattee*, which I did, and they returned with them to the Chowdraine's house by her *barree* door, and I closed my door and retired to rest, and shortly afterwards, I heard the noise of the cutting of the chain of the door, and the Chowdraine cried out in a state of alarm, and at about 2 o'clock, Lokee Barreek called me and told me to get up, and I accompanied him to a *kuddum* tree in front of Akhee Baboo's house, where I saw Fuqeer Doss, Nurhurry Chowdry, Dwarkee Baboo, Akhee Baboo, Kanoo Baboo, Nursing Naik, Purikhit Dey, Sreemunt Dey, Rash Barreek, Juggoo Naik, Rughoo Dhul and Benode Doss, and Nurhurry Chowdry was dividing the money taken from the Chowdraine's house, and on my arrival Sreemunt Dey told me they had killed the Chowdraine and taken her money, and he gave me rupees five, and I went to my house. At this time Deb Jenna and Deb Dey gave the alarm and the villagers went to the house, and I went also and saw the Chowdraine, who had a rattling in her throat.

"And on being further questioned, he said,—Nurhurry Chowdry got rupees twenty, Akhee Baboo rupees fifteen, Dwarkee Baboo rupees fifteen, Kanoo Baboo rupees ten, Sreemunt Dey rupees five, Fuqeer Doss rupees five, Lokee Barreek rupees three, Purikhit Dey rupees three, Benode Doss rupees three, Rughoo Dhul rupees three, Juggoo Naik rupees three, Rash Barreek rupees five, Nursing Naik rupees five, and two others, whose names I don't know, rupees five or six; but how much there was in all, I cannot say. And further on, he says,—I did not take the rupees five; Nurhurry Chowdry promised to give me the money, because I gave the axe and *chunkattee*, and saw them dividing the money, and he told me not to tell any one, the others got the money, &c.

"And in his examination before the magistrate, on the 10th of January, the above-named Dai Doss stated as follows:

"I did not kill Chundramadie with others, and I do not know how she was killed.

"And on being asked how he confessed before the darogah, and stated all the particulars, he replied, Nitranund Mahanty, the prosecutor, naib of the Chowdraine, in the presence of the darogah and jemadar, tied my hands behind me and stood on my chest and beat me till I was insensible; and what the darogah wrote when I was in that state I know not.

"And on being further questioned as to where he was on the night of the occurrence, he said—

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" On Monday night, the 16th Poos, on which night Chundramadie was killed, Dwarkee Baboo having told me the previous day, before he went to Doobsahae, to sleep in his house, and Nurhurry Chowdry having also told me to sleep in his house, when he went to Doobsahae on the day of the occurrence, I, after eating my repast, at about 8 o'clock at night, went and slept at the house of Dwarkee Baboo; and about 12 o'clock at night, I heard the Chowdraine's servants call out that some one had killed the Chowdraine, and mounted on the top of them, and I went and saw the Chowdraine lying with a *ruzzai* over her, and heard a rattling in her throat. The chowkeedar went that night and gave information at the thanna, and the darogah came next day and apprehended me and others, and after detaining us several days and ill-treating us, sent us the day before yesterday to Balasore. Dwarkee Baboo's house in which I was sleeping adjoins the Chowdraine's. I don't know anything about the axe and the cutting of the chain of the Chowdraine's sleeping apartment, and I did not get any money. I have no witnesses to the beating.

" Nurhurry Chowdry, in his examination before the magistrate on the 9th of February, denied having killed Chundramadie Chowdraine, and on being asked how she was killed? he said—that Nitrannund Mahanty had intrigues with the deceased, and his brother Indur Mahanty and his two wives were always quarrelling with him in consequence thereof, and he suspected that they had plotted together and killed her; that he was at Doobsahae, three or three and half *coss* distant, at the time of the murder, and heard of it the following day, and on reaching Koosera, he saw Chundramadie lying on her back and Indur Mahanty, Joodeshut Mahanty, and ten or fifteen persons sitting round about her, and on his asking Indur Mahanty what had occurred, he said that dacoits had killed her, and taken her property, and when Hurran Mitter, the thanna darogah, arrived, at about 2 o'clock, he took him, the prisoner, with him and examined her body, and observing no marks of violence on it or blood on the clothes, he asked if any blood had issued from any part of her body, when Indur Mahanty produced two small pieces of cloth with some red stains on them, which some persons present supposed to be blood, and others *pan* spittle. The darogah then inspected the premises, and called for Musst. Daina Die (the daughter of the deceased), and took her aside and consulted with her, and on his return asked her who would be prosecutor, and she replied she would, and she accused him, (the prisoner,) and his brothers. The darogah then arrested him and Kanoo Baboo, and at night placed them and Akhee Baboo, Nursing Naik and Dni Doss together. At 9 o'clock the Chowdraine expired,

and the darogah forwarded her body to Balasore, and the following day locked her house and placed two police paiks in charge of it, and went to Bhugwan Doss's house and placed him and the others, who had been apprehended in his *gowal baree* or cow-house, and after keeping him there ten days he sent for him one evening and tutored him, and demanded money from him; and on his refusing he gave orders to Abdood Russeek Khan, jemadar and others, who beat and bound him, and committed various other acts of oppression on him, until he became insensible, and among other things Nitranund Mahanty stood on his chest, and after recovering his senses he was again placed in the guard, and his examination was recorded four or five days afterwards by the thanna moonshee, but the darogah tore up that which was first written, and caused the mohurir to write another statement at his own dictation, omitting his objections. He also stated that Musst. Daina Die, Booyanee and Nitranund Mahanty and the darogah sold five hundred *photees*, or about two thousand and six hundred maunds of grain (*dhan*), belonging to the deceased, and took the money with them to the thanna, and eight days afterwards, or one month and six days after the occurrence, forwarded him, the prisoner, to Balasore, and he added that the darogah beat the witnesses named by him because they told the truth, and that Fuqeer Doss, Rughoo Dhul and the others accused him at the tutoring of the darogah, who told them that they would be admitted as evidence, and promised them money.

"And on his examination before the police he stated that Rajnarain Chowdry, zemindar, with whom he had a quarrel about some *nij-jot* land and Rajun, Canoongoe, who, with a view to get possession of the zemindaree, stated that Chundramadie had adopted his son Kasse Doss, with Nitranund Mahanty had tutored the other prisoners to accuse him.

"Akhee Baboo in his examination before the darogah denied being in any way concerned in killing Chundramadie, and stated that Fuqeer Doss and the other prisoners were tutored by Nitranund Mahanty to accuse him and his brothers, because they got a decree on account of Doobsahae in their favor, and he had complained against Indur Mahanty, the brother of Nitranund and others, for cutting his crops; that he was at home on the night of the occurrence, and on Deb Dey's giving the alarm, he went to the house, and found Deb Jenna and Deb Dey in great consternation saying some one had killed her, and at that time Soojun Jenna, Indur Mahanty, Joodeshut Mahanty, Mudhoo Mahanty, and Punchoo Jenna, chowkeedar, arrived and took care of her.

"And before the magistrate he also denied and made a statement to the same effect as the above, and added that he was

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kept in confinement one month and six days by the darogah, who called him daily before him and tutored him to confess, and bound and beat, and otherwise ill-treated him, because he refused to do so, and afterwards wrote an answer for him according to his pleasure, and forwarded him to Balasore. He also stated that Nitranund Mahanty, the *karpurdaaz* of the deceased, had intrigues for ten or twelve years with his mistress, and his brother Indur Mahanty and his two wives were always quarrelling with him about his doing so; and he, (the prisoner,) concluded that they had plotted together and killed her, and he asked why he should kill her; and named certain witnesses to his having been beat, &c.

“Sreemunt Dey on the 10th of February, denied killing Chundramadie, and stated that he did not know who killed her; that Fuqeer Doss and the others were tutored by Nitranund Mahanty, who bore him enmity, to accuse him, and that the darogah and jemadar and Nitranund Mahanty beat and maltreated him because he would not confess according as Fuqeer Doss had done. He also stated that he was at home on the night of the occurrence, and at calling of Dain Pudhan Burooah, accompanied him and Indur Mahanty and others to the deceased's house where Indur Mahanty told him that the Chowdraine was ill with *sisirree*, a disease of the head (query, apoplexy?) and had a rattling in her throat, and told him to call a Brahmin, and he went and fetched Monee Paneegrahee to receive *dān* or charity, and afterwards brought garlic and oil from the house of Rajnarain Canoongoe, and gave them to Indur Mahanty, who applied them to the deceased's neck, &c.; and on his Mofussil statement being read to him he said he was insensible (*behosh*) when the mohurir recorded his answer, and he did not know what was written.

“Nursing Naik, in his examination before the magistrate on the 10th of February, denied being in any way concerned in the murder of Chundramadie Chowdraine, or knowing anything about it, and stated that Fuqeer Doss and the other prisoners were tutored by Nitranund Mahanty and the darogah to accuse him; that he was at his house on the night of the occurrence, which is one *dak* or call distant from the Chowdraine's, and he heard Deb Jenna and Deb Dey call out, but being ill could not go that night to the Chowdraine's house; and he went the following morning and saw her lying with her neck swollen. He further alleged that Nitranund Mahanty bore him enmity, because his brother, who was formerly chowkeedar of the Koosera Ghur, viz., the Chowdraine's, would not be witness to a fabricated *kubala*, and that the darogah colluded with him because he was an intimate friend of Daina Die's husband, and that the darogah, Nitranund Mahanty and the jemadar beat him at Bhugwan

Doss's house to make him confess, and he did not know what he wrote in the Mofussil.

Hurrychurn Doss, in his examination before the magistrate on the 10th of February, denied ever having consulted with the other prisoners to kill the Chowdraine, and stated that he went to Midnapore on the 4th or 5th of Poos and returned on the 21st idem; and he further stated that Nitranund Mahanty and the darogah beat his son Dai Doss and made him say that he was concerned.

"On the 9th of February, Musst. Daina Dai Beoyanee, the daughter of the deceased, presented a petition, praying that Nitranund Mahanty, her mother's *karpurdauz*, might be permitted to prosecute the case instead of her, and her prayer was accordingly complied with.

"And on the 10th of February, a petition was forwarded by the magistrate by dāk from Musst. Sreemuttee Rookuna Die, widow of Deenbundoo Chowdry, and mother of Sheebnarain Chowdry, zemindar, setting forth that out of the zemindaree Koosera, which was the property of the petitioner's husband's ancestors, thirteen annas had been sold on account of Government revenue, and that of the remaining three annas one-half belonged to her father-in-law, Purikhit Chowdry, and the other to Assaram Chowdry, the husband of Chundramadie, who died childless, and his widow, the said Chundramadie, got possession, and she having allowed her servant Nitranund Mahanty to exercise unrestrained control over herself and her property, the petitioner's husband and brothers interfered and tried to put a stop to his proceedings, and he, in consequence, practised all sorts of chicanery and instituted numerous suits against them, and now that Chundramadie had somehow met her death, he had maliciously charged her brothers-in-law with having killed her, as would be seen on the investigation of the case. The petition also set forth that Nitranund Mahanty, and Brijbullub Doss, the son of Rajun Canoongoe, who was in no way connected with the Chowdraine, had got the police darogah into their power and made away with all her property, and had collected the grain dealers from various parts of the country, and sold rupees seven hundred or eight hundred worth of *dhan* belonging to her, out of which they had disbursed about two hundred and fifty on account of her funeral expenses and embezzled the rest, and had plotted to ruin the petitioner's brothers-in-law. And the rest of her property, documents, &c., had been taken by Nitranund Mahanty to his own house, and he was about to dispose of her buffaloes and other cattle. It was, moreover, asserted therein, that Nitranund Mahanty was in the habit of cohabiting with the Chowdraine, and that his relations had, in consequence, plotted together and killed her, and to escape punishment themselves

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had caused the apprehension of the petitioner's brothers-in-law, and it concluded by stating that the petitioner, being a female, could not personally attend, and requesting that the buffaloes and whatever property remained might be attached, and that Kureem Buxsh, the darogah of Phoolhutta, might be deputed to investigate the case.

"On the above petition it was ordered that when the petitioner appeared in person or by mookhtar her representations should be inquired into.

"The prosecutor Nitranund Mahanty, having been at Balasore on the night of the occurrence, merely repeated what he had heard from others and deposed to the existence of quarrels between the deceased Chundramadie and her nephews Nurhurry Chowdry, Akhee Baboo, Dwarkee Baboo and Kanoo Baboo, about talooks Doobsahae and Doorbanundpore, and the crops of certain land, &c., in which he acted as the agent, or mookhtar of the said Chundramadie and instituted cases against them in the foudaree and civil courts. He also asserted that the deceased adopted Kasseer Doss, whose age he stated to be seventeen or eighteen years in 1256 U.

"And Deb Dey and Deb Jenna, servants of the deceased, the principal, and in fact the only witnesses to the occurrence, having perjured themselves in the following instances, and having been convicted and punished for the same by this court on the 8th ultimo, their evidence has not only been lost to the prosecution, but their tergiversation has tended in a considerable degree to create discredit against the whole of the proceedings of the police.

"Deb Dey, (witness No. 44,) in his examination before the magistrate on the 27th of February deposed that, about ten *ghurries*, i. e., (2 A. M.) on the night of the occurrence, he was awoke by a noise in the *chopper* of the wall by the sudder door of Chundramadie's house, and that he and Deb Jenna got up and stood at the door of the room in which they were sleeping and saw a person get over the wall of the inner court-yard, the door of which, as well as the sudder door, he opened and let in ten or twelve other persons; and that on his (Deb Dey) and Deb Jenna's inquiring who they were, Nursing Naik and Dai Doss first ran up, seized hold of Deb Jenna, and tied a cloth round his face, and then Dwarkee Baboo and Fuqeer Doss in the same manner tied a cloth round his eyes and face, and threatened to beat them if they made a noise; and that he recognized Fuqeer Doss, Dwarkee Baboo, Nursing Naik and Dai Doss, from the light of the fire which was in their sleeping apartment. And he further deposed that the cloth which was tied round his face having slipped off his eyes, he saw Nurroo Baboo (Nurhurry Chowdry) and Akhee Baboo go into the apartment in which the deceased was.

"And the said witness when examined before the court on the 24th of May, deposed, that on the night in question he was sleeping rolled up inside a mat when the thieves came and sat on the two ends of the mat, and it being dark he recognized no one, and did not know how they got into the house, and that after the departure of the thieves he gave the alarm.

"Deb Jenna, (witness No. 45,) in his examination before the magistrate on the 27th of February, stated that about nine or ten *ghurries*, (i. e., 2 A. M.) of Monday night, 16th Poos, when he was sleeping in the house of Chundramadie, he heard a noise on the *chopper* of the wall near to the sudder door, and he and Deb Dey, who was with him, got up and saw a person jump down into the inner court-yard, and open the door of it, and likewise the sudder door and let in ten or twelve others; and that on his and Deb Dey's asking who they were, Nursing Naik and Dai Doss, whom he recognized from the light of the fire which was in their sleeping apartment, pulled him into the house and there tied the cloth he was wearing at the time round his face.

"And the said witness in his examination before the court on the 24th of May, deposes that the thieves got over the *purchit* or wall, and were breaking open the door of Chundramadie's sleeping apartment, when she called out and asked who was there; and on his and Deb Dey's doing the same, the thieves came and sat on the top of the mat in which they were wrapped up, and that he did not recognize any one.

"And in addition to the above contradictions, I here beg to point out that the foudjaree statements of these two persons are not only at variance with the confessions of the prisoners, as they relate to the parts acted by the different parties; but the said witnesses did not say that they recognized any one until after the darogah proceeded to the spot; and their depositions were not taken till the day following his arrival.

"Witnesses Nos. 46 to 53 depose generally to having heard a noise in the direction of Chundramadie's house, and having gone there and seen her lying insensible, with her throat swollen and twisted to one side, a little blood oozing from her mouth and nose, her chest red, and her hair dishevelled, and to certain persons among them having applied opium, garlic and oil, to try to revive her; and Nos. 49 to 52 further depose that certain persons among the prisoners were absent from their houses when they called them previous to hearing the noise on the night of the occurrence, but on this part of their statements very little reliance can be placed. It is, moreover, to be observed, that the testimony of Indur Mahanty, (witness No. 53,) is wholly undeserving of credit, he having deposed before this court not only in opposition both to the evidence of all the other witnesses, but in opposition to his own

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evidence before the magistrate, that Deb Jenna and Deb Dey told him on the night of the occurrence, that they recognized the whole of the prisoners present as well as those who had been released by the magistrate.

"Witnesses Nos. 54 and 55 depose, that about 3 A. M., on the night of the 16th Poos, or rather on the morning of the 17th, they saw Dwarkee Baboo, the prisoner No. 15, and Nurhurry Chowdry going through the *dhan* fields adjoining mouza Poorsuttumpore, and that on their asking them where they were going, they said they were proceeding to Doobsahae, in search of a mid-wife, as Nurhurry Chowdry's wife was about to be confined, but their story appears to me to be a perfect fabrication.

"Mr. Assistant Surgeon Kelly, who held a *post mortem* examination of the body of Chundramadie, having left the station of Balasore before the trial came on, was not examined before this court; but in his examination recorded before the magistrate, on the 17th March 1852, he deposed to the effect that her death resulted from apoplexy combined with suffocation, and that although the appearances observed on dissection, might have resulted from apoplexy induced by natural causes, it was at the same time highly improbable that they would have done so; and he, Mr. Kelly, was of opinion, that the deceased did not die a natural death.

"The rest of the evidence relates to the apprehension and confessions of the prisoners, and the *sooruthal* or inquest held by the darogah on the deceased's body.

"All the prisoners pleaded 'not guilty' before this court.

"Fuqeer Doss, (prisoner No. 6,) pleaded that the prosecutor and his brother Indur Mahanty bore him enmity and accused him in consequence; that he was beat and otherwise maltreated morning and evening for three days by the prosecutor, the darogah, and the jemadar, to make him say what the prosecutor and Indur Mahanty told him, till at last he became insensible: and that on his still refusing, after he came to his senses, the prosecutor and Indur Mahanty and Mughunee Persaud Bakshee, on the part of Rajnarain Chowdry, consulted together and wrote something, but what it was he did not know, and when he was forwarded to the magistrate he told him he knew nothing, and the *omla* copied some paper which the darogah sent by the burkundauz. He also stated that the prosecutor told him that the deceased had a quantity of property, and that he would give him rupees fifty, and get him appointed gomashtha when Musst. Daina Dai gets possession of the zemindaree; and the darogah told him he would be released, if he said what he was told, and accused Nurhurry Chowdry, but he would not.

"The above prisoner named four witnesses, Nos. 57, 58, 61 and 64, to his defence. No. 57 deposed to having heard that he

was beat, and Nos. 58, 61 and 64 to having heard him cry at the time he was beat. It was at the house of Rughoo Doss, brother of the last witness, where the darogah resided while engaged in the investigation of the case that he is said to have been beat.

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"Rash Barreek, (prisoner No. 7,) also pleaded that there was enmity between Indur Mahanty and him, and that after being first beat by the darogah, jemadar, and burkundauz, Nitranund Mahanty told the darogah to give him into his charge, saying he would tell him what to say, and that taking him to his house he promised him rupees five, if he would accuse Nurhurry Chowdry, and on his refusing, Nitranund took him back to the darogah, and said that without being beat he would say nothing; and then the darogah, jemadar and Nitranund beat and otherwise maltreated him till he was insensible; and while he was in that state, they wrote something and told him to sign it, but he refused to do so, and Nitranund Mahanty said he knew his signature, and would sign it for him; and when he was forwarded to the magistrate, the following day, the prosecutor and darogah told him that if he stated as they had told him he would be released; that he, the darogah, would tell the burkundauz what he was to say, and he, the prisoner, was only to concur and say yes.

"The prisoner cited six witnesses to his defence, one of whom died before the trial; of the other five, four deposed to having heard his cries at the time he was beat, and two to his having been at home on the night of the occurrence.

"Rughoo Dhul, (prisoner No. 8,) pleaded that he was beat by the prosecutor, the darogah and jemadar, till he was senseless, and what the prosecutor told the darogah to write when he was in that state he did not know, and on his going before the magistrate, the burkundauz who accompanied him gave the mohurir a paper sent to him by the darogah, from which he wrote an answer for him. The prisoner named two witnesses to his having been beat, viz., Brujo Doss, (witness No. 62,) who deposed to the fact, and witness No. 72, who was not forthcoming; and four to his having been at home on the night of the occurrence, two of whom, his mother and sister, deposed to the fact, and the other two pleaded ignorance on the subject.

"Purikhit Dey, (No. 9,) pleaded enmity between the plaintiff and himself, and stated that the plaintiff, after having first caused him to be apprehended and beat on his return from Balasore, where he had accompanied the body of the deceased, took him to his house, and in the presence of Indur Mahanty, Brujo Baboo, Kasse Baboo and others, told him that as he was the Chowdraine's *ryot*, he was to accuse the Baboos Nurhurry Chowdry and his brothers, and Kasse Baboo would get possession

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of the zemindaree, and he, the prosecutor, would procure him employment, and when he refused to do so, he beat him at his own door, and then took him to the darogah, and afterwards a second time took him to his house, and said he would write something which he, the prisoner, was to sign, but he objected, and he was taken back to the darogah, and was beat and maltreated by the prosecutor and others; and what he caused to be written when he was in a state of insensibility he did not know, and when taken before the magistrate, the mohurir wrote his answer from the Mofussil papers, &c.

"Of the witnesses cited by the prisoner, No. 73, 74 and 75 deposed to his having been at home, and Nos. 77 and 78 to having heard his cries at the time he was beat.

"Juggoo Naik, (prisoner No. 10,) stated that he was apprehended by the jemadar at the instance of Indur Mahanty; the brother of Nitranund, the prosecutor, and taken to Rughoo Doss's house, where he told the darogah he knew nothing about the case, and he was placed in the cow-house where at night Nitranund Mahanty, the prosecutor, Indur Mahanty, Joodeshut Mahanty, and Brujo Baboo, the son of Rajun Canoongoe and Maghunee Puddhan, buxshes of Rajnarain Chowdry, assembled, and the prosecutor told him that Chundramadie had no relations (heirs,) and that if he accused Nurro Baboo, Akhee Baboo and the others, he would give the darogah and the prisoner some of her property, and Kassce Baboo would get possession of the zemindaree; but he said he knew nothing about the case, and asked why he should accuse others, and he was kept that night in the cow-house. And the next day the prosecutor and others told him that if he knew nothing, to say as they would dictate to the darogah, and on his refusing they bound him, and the prosecutor said he would ruin him because of the previous quarrel existing between them about some land. And on his persisting in his refusal to accuse Nurhurry Chowdry and his brothers, and stating that he was at home on the night of the occurrence, the prosecutor and darogah beat and ill-treated him till he became insensible. And after he was brought to his senses he was taken into Rughoo Doss' house where the persons above-named consulted with the darogah and jemadar, and wrote something which he was told to sign, but he told them he could neither read nor write, and he did not know how it was signed. As to what occurred after he was taken before the magistrate he tells the same story as the other prisoners; and he did not know what was written by the *omla*.

"Of the witnesses cited by this prisoner, Nos. 79 and 80 deposed to the prisoner's having been at home, Nos. 80 and 81 to his having been severely beat, and No. 82 to the prisoners generally having been beat.

"Lokee Barreek, (prisoner No. 11,) stated, that he slept in his own house on Monday night, on which the deceased was killed, and the following day at 3 P. M., as he was returning from his field, he was summoned by Poyree Jenna, paik, to wait on the darogah, and he went and did so for eight or nine days, after which the prosecutor accused him because he told him that he would complain to the darogah if he did not restore a cow which his brother Indur Mahanty had taken from his house on account of a claim for rent. And the same night he was tutored by the prosecutor, the darogah, and jemadar, to accuse the baboos, as they had discharged him from their service, and because he refused to do so, they kept him that night in Rughoo Doss' cow-house and the next day beat and otherwise ill-treated him till he was insensible, and afterwards the darogah and jemadar, in consultation with the prosecutor, wrote something, but what, he did not know. And when he was forwarded to the magistrate, who was in the Mofussil making a tour of his district, the mohurir wrote what the burkundauz who was in charge of him told him, and when he was told to sign it: he objected, stating he had said nothing, &c.

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"Witnesses Nos. 83 to 86, cited by the prisoner, deposed to his having been at home on the night of the murder, and No. 87, Mudhoo Doss, the son of Rughoo Doss, deposed to his having been beat. No. 88, another witness named by the prisoner, died of cholera before he was examined.

"Benode Doss, (prisoner No. 12) stated, that four days after the darogah had taken up his quarters in his house, the prosecutor caused Purikhit Dey to accuse him, stating that if he and his father did not execute a *kubala* for the three pie share of the zemindaree which Nurhurry Chowdry had transferred *benamee* in the name of Rughoonath Doss, his father's eldest brother, he would make him, Benode Doss, prisoner in the case, and on his asking the prosecutor what he was charged with after he was apprehended, he replied with killing Chundramadie, and on his denying, he, the prosecutor, took him to the granary, where he bound, beat, and threw him down, and stood on him; and told him to state as he told him, and his buxshee would see that the same was written before the magistrate, and after he was restored to his senses, he sat in his bungalow, while the prosecutor and his brother Indur Mahanty and the police wrote something, but what they wrote he did not know, and when he was forwarded to the magistrate at Seerghur the prosecutor's buxshee accompanied him, and what was there written he did not know.

"Of the witnesses cited by the prisoner, Nos. 89, 90 and 91 deposed to his having been at home the whole of Monday night, the 16th Poos, and Nos. 92 and 93 to his having been beat.

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“Mughun Jenna, (prisoner No. 13,) stated, that he was apprehended on Sunday (the sixth day after the occurrence,) by the jemadar and Nitranund Mahanty, who informed him that a dacoity had been committed in Chundramadie's house, and that Purikhit Dey had named him as having been concerned in it, and on his being taken to the darogah, he and the jemadar and the prosecutor told him to accuse the Baboos; and on his asking what Baboos, and saying he neither knew them nor their names, the prosecutor and the darogah said he required a great deal of beating, and told the jemadar to tie his hands behind him and beat him; and in that state they kept him exposed in the cold, and on his complaining that he was suffering much from cold and the want of something to eat, the darogah told some one to give him to eat, and loose his hands, and he would afterwards state (as they told him); that he then got a handful of *choora* and sat by the fire and felt somewhat better, and the following morning the darogah again told him to state what he told him; and on his refusing to do so, the darogah, jemadar and the prosecutor beat him till he was insensible, and afterwards consulted together in the bungalow and wrote something, and forwarded him the following day to the magistrate, and on reaching Seerghur, the *omla* asked him what he knew; and he replied that he knew nothing, and he recorded no answer before the magistrate.

“Witnesses Nos. 94 to 98 were cited by the prisoner to prove that he was at home on the night of the 16th Poos, and although they do not depose to his having been at home the whole night, it is to be inferred from the statements of Nos. 94, 95 and 97, that he was at home. Witnesses Nos. 62 and 93 state that he was beat to make him confess.

“Nursing Dey, (prisoner No. 14,) stated that on his being apprehended and taken before the darogah, he told him that he knew nothing about Chundramadie's death; that the darogah and jemadar then threatened him, and a burkundauz struck him twice, when the prosecutor interposed and told him not to beat him; that he understood his (the prisoner's) deposition, and called him aside to a tank and told him to say the Baboos killed Chundramadie, and that he would give rupees five, and as he was a resident of a neighbouring village he would be made witness. But he refused, and he was bound and beat severely for three days, and on Tuesday night was exposed in the cold without his clothes, and otherwise maltreated by the darogah, the jemadar and the prosecutor, till he became insensible, and on the prosecutor's abusing him and saying he would only say what pleased himself, his brother Indur Mahanty remarked, ‘he is *behosh*, what deposition can he make? they would record one for him;’ and they and the darogah and mohurir sat together and wrote something, but what,

he did not know, and he was afterwards forwarded to Balasore and thence to the magistrate at Seerghur, where he became *behosh*, and what was there written he did not know.

"Witnesses Nos. 101 and 102, who were examined on the part of the prisoner, stated, that they did not know where he was on the night of the occurrence; but the former, who is the prisoner's brother, said, that he heard he was severely beat and ill-treated to make him confess.

"The prisoner declined having his other witnesses, Nos. 67 and 103, examined, stating that the prosecutor had tutored them, and they were otherwise connected with him.

"Dwarkee Baboo, (prisoner No. 15,) pleaded, that he was at Doobsahae on the night of the occurrence, as recorded in his examination before the magistrate, and he further stated that the day following that on which he was apprehended on the accusation of Indur Mahanty at Doobsahae, he was taken before the darogah at Koosera, who told him that Daina Die had charged him with killing the Chowdraine, and that on his denying, he was placed in Mudhoo Doss' cow-house under charge of a burkundauz, and at about 4 P. M. the same afternoon, Nitraund Mahanty, the prosecutor, arrived, and after conversing with the darogah he came to him and said that he had heard from his brother and Daina Die Boyanee that he was absent at the time and had not killed the Chowdraine, and that if he would say as he told him, he would cause him to be made *malik*, or proprietor of the zemindaree; and that on his asking what it was he wished him to say, he replied, that the Boyanee and the darogah would first consult together, and he would tell him in the evening, and went away; that in the evening the darogah informed him that the Boyanee had come to Pooree Jenna's house and told him to go and see her; and on his doing so, the prosecutor brought some *mahapershad* and gave it to the darogah, and caused him to make him, the prisoner, his *dhurmpoo* (in other words to swear that he would treat him as his son), and then he, in like manner, made his own *dhurmpoo*, and the Boyanee informed him that the darogah was a great friend of her husband's and would not do anything to injure him; that after this he was taken by the prosecutor and the darogah and jemadar to a *gully* or lane adjoining the house, and there told by them that they were aware he did not witness anything, but he was to say that Akhee Baboo and Nurhurry Chowdry plotted to kill the deceased, and if he would do so, they would cause him to be made *malik* of the property, but having refused to do so, he was taken back to the *ambar*, where he was detained two days; and on the evening of the second day, the prosecutor again told him to accuse the above persons, and because he would not, the jemadar and burkundauz beat him, by direction of the prosecutor, till he was insensible. And after Indur

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Mahanty, the prosecutor's brother, had given him some *julpan*, by order of the jemadar, the prosecutor again asked him if he would say anything or not, and Indur Mahanty twice kicked him and he fell on the ground; and the prosecutor then gave orders to desist from beating him as he would say nothing, and make him sit down, and he, the prosecutor, would cause his deposition to be written; but on this the darogah remarked, that he was alarmed, and ordered him to be taken away, and he would record his deposition the next day; that the next day he was taken before the darogah, and on his questioning him, he said he knew nothing, as he had already informed him; and the prosecutor then caused something to be written; but what it was he did not know; neither did he know what the *omla* wrote from the Mofussil papers when he was taken before the magistrate.

"Of the witnesses cited by the prisoner, Nos. 105 to 110 deposed to his having been at Doobsahae with Nurlhurry Chowdry on the night of the occurrence; and Nos. 108, 113, 114 and 82 deposed to hearing his cries at the time he was beat; No. 111 was not examined, as the *alibi* was fully established, and No. 112 was absent.

"Kanoo Baboo, (prisoner No. 16,) stated, that on Monday, the night Chundramadie was killed, he was watching his *dhan* (at Sheeburnain Chowdry's *bassa*), which he had cut that day at the Koosera *bheel*, and that during the night a bull having come to eat the *dhan*, he got up and went out to drive it away, when he heard a noise in the direction of the *ghur* (the Chowdraine's house), and on running towards it, he saw some persons by a tree near to the *mahadeb*; and on his asking them who they were, they replied Indur Mahanty, Joodeshut Mahanty and Mudhoo Mahanty, and on his again asking them where they were going, they said to the *ghur*; and they went first, and he followed them, and on arriving there learned from Deb Jenna, and Deb Dey, who were crying at the door, that some one had killed the Chowdraine, but that they were asleep and did not know how she was killed; that he then went into the house, and there saw the above three persons and Punchoo Jenna, Hurran Jenna and Sheikh Kanoo Sirdar, who applied warmth to the Chowdraine's body, and told him to distribute *dān* or charity on her behalf; and on his asking what he was to distribute? Indur Mahanty told him to give the things he had prepared; that on this he observed that it was night, and he would distribute alms the following day, but those present told him to do it at once, lest she should not live till the morning; and afterwards Monee Paneegrahee having arrived that night on the summons of Indur Mahanty, he, at his telling, gave the Brahmin a buffalo, a cow, *cutorah*, and some *dhan*, and other articles, and himself

sat the whole night by the side of the Chowdraine, and in the morning went away to wash, after informing Indur Mahanty that he was going; that shortly afterwards he was recalled by Soojun Jenna, and going there, saw the darogah, who apprehended him at Indur Mahanty's dictation, and at noon, the following day, the prosecutor, Nitranund Mahanty, arrived from Balasore, and told him to tell what he knew, remarking that his brothers had not given him any share of the zemindaree, and he would cause it to be made over to me; that on his saying that he had relinquished all claim to any part of the zemindaree, and that he knew nothing, the prosecutor threatened him, saying, that the darogah had come and he would take out his intestines, and in the evening he was again told by the prosecutor and the darogah, who were at Mudhoo Doss's house, to tell what he knew, and they would not beat him and would procure his release; and on his saying he knew nothing, the prosecutor remarked that if violence was not resorted to, he would say nothing; and the darogah then gave orders to a burkundauz, who took him to the eaves of the house and there beat and kicked him and tied his mouth with his cloth; but he still said nothing, and he was shut up that night in the cow-house, where the darogah came to him the following day and told him that he would die from the effects of the beating, and told him to name his brothers as the parties who killed the Chowdraine, and on his refusing to do so, he tied his hands and feet and threw him on the ground and placed a stone on his chest; after which the prosecutor made his appearance and asked why he endured so much torture, and told him to accuse his brothers; but he still refused, and the prosecutor stood on the top of him till he became insensible; that on his recovering his senses, he was taken before the darogah, when the prosecutor and Brujo Baboo and Mughunee Buxshee consulted with the darogah and wrote something, which he was told to sign, but he said he did not know how to write, and the prosecutor signed it for him, remarking that he knew his signature, and he was the next day forwarded to Balasore, and thence to the magistrate who was in the Mofussil, and he told him that he knew nothing about the murder of the deceased, and that the darogah had beat him and written something according to his own pleasure. He also asserted that the darogah sent a letter or some writing by the burkundauz which he gave to Beepro Naik, the prosecutor's buxshee, and that the latter gave it to the *omla*, who on perusing it asked him if he would not state as he had done before the darogah, and that he replied he knew nothing, and had written nothing.

"Of the witnesses cited by the prisoner, Nos. 115, 116 and 117 deposed to his having been at Sheebnarain Mahapater's *bassa*, watching his *dhan*, on the night of the murder, and

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witness No. 82 deposed to hearing the prisoner cry out when he was beat and ill-treated.

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"The above prisoner, Kanoo Baboo, having, at the close of his defence, requested that the petition presented by Musst. Daina Die Boyanee, as well as her deposition taken before the magistrate, in which she complained of the misconduct of the prosecutor, Nitranund Mahanty, and requested that other parties might be substituted as the prosecutor instead of him, might be called for, they were sent for accordingly, and an abstract of them is here subjoined.

"Purport of the petition of Daina Die Boyanee, presented to the magistrate on the 17th March 1852 :—

"My (petitioner's) mother having died without leaving any sons, I became heir to her zemindarees Doorbanundpore and Doobsahae, and all other property, and as my mother's *karpurdaz*, Nitranund Mahanty, on the strength of a miscellaneous *mookhtarname*, has, without my permission, embezzled the grain which was in store in the granary, as well as the grain which was lent or advanced in the Mofussil, together with the *khazana*, cash, and other property to the amount of rupees two thousand, it is to be inferred that he was desirous for my mother's death, and therefore, having discovered his misconduct, I have discharged him from the office of *mookhtar*, and have appointed in his place Rajbullub Putnaik and Beepro Pershad Naik, in order that the fraudulent (*sureb*) case which had been instituted may be investigated through their agency, &c."

"On the receipt of the above petition, the magistrate having suspected that it might have been got up by Pertab Roodra Boonya, the son of the petitioner, who was also in jail, summoned the petitioner, who attended on the 1st of April, and recorded her deposition to the following effect :—

"That Chundramadie was her own mother; that thirteen years ago she quarrelled with Pertab Roodra Boonya, the son of her husband's second wife, and in consequence left the Jamkoonda Ghur and went and lived four *mauns* distant from her mother's house.

"That on the night of the 16th Poos, she was sleeping in her house, and her servants Roopmonee Dasse, Dhunnoo Punda and Nurhurry Mahanty were also sleeping on the premises, when between 2 and 3 o'clock, her mother's servants, Deb Jenna and Deb Dey, called out to her to come quickly, her mother had been killed; that she then told her servants to call the villagers, and afterwards went with her *dasse*, and saw Indur Mahanty and others collected there, rubbing and applying warmth to her mother, who had a rattling in her throat, and whose chest was swollen and black, and a little blood oozing from her nostrils, and she suspected Nurhurry Chowdry, Kanoo Baboo, Akhee

Baboo and Dwarkee Baboo, in consequence of their having a quarrel with her about her zemindarees, of having killed her, and stated the same to the darogah.

"And on being asked about the petition, she said,—it was in time she forwarded the petition, and her object in doing so was that Nitranund Mahanty, whom she had previously applied to have made prosecutor, might be dismissed from the office of mookhtar, as he had misconducted himself and embezzled her mother's *dhan*, *khazana*, and other property, to the amount of rupees one thousand, and that Rajbullub Putnaik, and Beepro Pershad Naik might be appointed in his stead, but she denied having given instructions to the person who wrote the petition to state that the murder case was a false or fraudulent one.

"She further stated that Deb Jenna and Deb Dey said that some persons sat on them, and though they saw no one, they suspected that the deceased had been killed by her nephews. Likewise that Akhee Baboo and Kanoo Baboo went to her mother's house before her, and that *Akhee Baboo* gave the *dān* or charity to Monce Paneegrahee, Brahmin.

"The *futwa* of the law officer pronounces the evidence of the witnesses to the facts of the case to be fabricated and altogether undeserving of credit, and it further notifies that the witnesses to the Mofussil confessions had been tutored what they were to state. But it declares the prisoners to be convicted on their foudjaree confessions, *viz.*, the prisoners Nos. 6, 7, 8, 9, 10, 11, 12 and 13, *first*, of being accomplices and aiding and abetting in the wilful murder of Chundramadie Chowdraine, and *secondly*, of being accessaries both before and after the fact; the prisoner No. 14 of being accessory both before and after the fact, and the prisoners Nos. 15 and 16 with privity to the murder before and after the fact in concealing their knowledge of the murder.

"This is an extraordinary perplexing case, and I have experienced the greatest difficulty in forming anything like a definite opinion concerning it, and it is on this account, as well as to bring as prominently as possible the whole of the circumstances attending it before the superior court, that I have recorded the proceedings at such great length. It is, I admit, exceedingly difficult to assign a satisfactory reason for eleven persons deliberately acknowledging themselves to be implicated in the murder in the presence of a magistrate, if they were not somehow concerned in it; but the surpassing extravagant and palpably false statements made by the prisoners in the present instance before this court, to the effect, that they made no confessions at all before the magistrate, and that the *omla* recorded their answers according to private communications transmitted to them by the darogah through the burkundauzes, who conducted them to the head-quarters of the magistrate, forcibly exemplifies

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what reckless and ridiculous things natives will both say and do; and although, on the one hand, the fact of quarrels or enmity having existed between the deceased and her nephews, though apparently that enmity was principally if not totally engendered by the acts and interference of her naib or *karpurdaz*, Nitranund Mahanty, who was permitted to be prosecutor in the case, tends to strengthen the suspicion created by the confessions of the prisoners,—that Nurhurry Chowdry and his brothers plotted and perpetrated the murder of Chundramadie, *i. e.*, the same source of enmity also to a certain extent affords grounds for suspecting that, as suggested in the answers of Nurhurry Chowdry and Akhee Baboo before the magistrate, Nitranund Mahanty's friends may have for some reason killed the deceased, and have entered into a plot to convict the said Nurhurry Chowdry and his brothers of the murder, with the view to get possession of her property, and the following facts furnish presumptive proof of the existence of such a plot,—*first*, that of Nitranund Mahanty and Musst. Daina Die Boyanee (the last of whom evidently acted at the commencement of the case in concert with the said Nitranund Mahanty and Indur Mahanty) having so immediately after the death of Chundramadie endeavoured to set up a claimant in the person of Kassee Baboo, the son of Rajun Canoon-goe, as heir of the property of the deceased, in supercession of her nephews, though it is pretty clear, from the circumstances of the case, that the deceased made no such adoption; *secondly*, that of Nitranund Mahanty having made away with the deceased's *dhan* and other property, (though he endeavours to make it appear that he disposed of it to defray the expenses of the funeral rites of the deceased,) as is manifested by the petition and deposition of Daina Die Boyanee, recorded on the 1st of April, and likewise of the petition of Sreemutty Rookna Die, which was transmitted to the magistrate by dawk, on the 10th of February 1852; and *thirdly*, that of the very prompt arrival of Indur Mahanty and his brothers Joodeshut Mahanty and Mudhoo Mahanty at the house of the deceased, immediately the alarm of her death was given, which, coupled with the part subsequently taken by Indur Mahanty, in getting up and giving false evidence against the prisoners, leaves room to suspect that they have been cognizant of what was going on.

“However, setting aside the above conjectural grounds, it is to be remarked as more to the point, that Deb Jenna and Deb Dey, the only two eye-witnesses in the case, not only give evidence before this court directly contradictory to that which they had recorded before the foudaree court, touching their having recognized certain of the prisoners on the night of the occurrence (in consequence of which they have been convicted and punished for perjury), but their foudaree depositions are opposed to the con-

fessions of the prisoners, as respects the parts taken by the different prisoners at the time of the murder; and it is admitted by all, except Indur Mahanty, the brother of the prosecutor, in his evidence before this court, that the said two persons, stated in the first place that they did not recognize any one, and as I have stated in a previous place in this report, the evidence of the said Indur Mahanty is totally undeserving of credit, not only because it is opposed to that of every one else, but because the statements made by him in the different courts are contradictory one of the other; and as it is manifest throughout the proceedings, that it was at the instigation and indication of this individual that the different prisoners were apprehended, I cannot divest myself of the idea that improper means have been resorted to to induce them to confess. In short, it appears that the answer of Fugger Doss, (prisoner No. 6.) on the grounds of whose confession most of the others are stated to have been apprehended, was not recorded until the fourth day after he was arrested, and that of Kanoo Baboo, who was apprehended on the 30th of December, was not written till the 9th of January, and it is fully proved by the general testimony of the witnesses cited by the prisoners committed for trial before this court, as well as those cited by Nurhurry Chowdry and Akhee Baboo, who were acquitted by the magistrate, that the prisoners were beat and maltreated to make them confess, and the confessions themselves in a measure bear out the pleas advanced by the prisoners before this court, to the effect that they were tutored to implicate Nurhurry Chowdry and his brothers, and assured that if they did so they would themselves be released; their general tendency being to convict the said Nurhurry Chowdry and his brothers, rather than to inculpate themselves.

"I, moreover, beg to observe, that not only are the statements of the principal witnesses for the prosecution contradictory and false, but the general facts of the case, as they appear on the record, and the confessions of the prisoners, relatively considered, are all at variance, as exemplified below.

"*First*,—When the chowkeedar, Punchoo Jenna, first gave information of the death of Chundramadie at the thanna, he recorded in his deposition that on his going to the house of Nurhurry Chowdry, while patrolling the village on the night of the 16th of Poos, *previous to the occurrence*, he was informed by Dai Doss, that Nurhurry Chowdry and Dwarkee Baboo had gone to Doobsahae, and in his depositions before this and the foudaree courts, he still admitted that the latter was at Doobsahae, and the witnesses cited both by Dwarkee Baboo and Nurhurry Chowdry most unequivocally deposed that they were both at Doobsahae. But notwithstanding this, the greater part of the prisoners accuse both Nurhurry Chowdry and Dwarkee Baboo of

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having been with them, and having taken principal parts in the murder.

"*Secondly*,—None of the four prisoners, Nos. 6, 7, 8 and 9, first examined before the darogah, mentioned a word about Deb Jenna and Deb Dey's having come out of the Chowdraine's house and called out at the sudder door while they were assembled under the trees adjoining it; but as soon as the circumstance was once mooted, then all the prisoners subsequently examined are represented to have said the same. But I do not think it probable, that if such a circumstance occurred, and all the prisoners were assembled together as they are alleged to have been, that any of them would have omitted to mention it.

"*Thirdly*,—Some of the prisoners, in reply to questions put to them by the darogah, stated positively that neither Dwarkee Baboo nor Kanoo Baboo were present, while some state they saw the one and not the other, and others say that they were both there, and that the former especially took a prominent part in the murder of Chundramadie. Some of the prisoners likewise say, that the party consisted of eleven, and others that it consisted of sixteen persons; and there is besides great contradiction in their statements both as to the parts taken by the different prisoners and the fact of Nurhurry Chowdry and Akhee Baboo having promised them money. As relates to this latter point, I beg to call especial attention to the confession of Dai Doss before the police, as it tends, in my mind, forcibly to show, that if there is any truth in the confessions there is also a great deal of falsehood mixed up with it, and that the prisoners as well as the witnesses have been tutored.

"And *lastly*, as relates to the confessions, I beg to observe that whereas they are contradictory on points that the prisoners might have recollected, they tally in a minute degree in minor matters, which, owing to the confusion that must have taken place at the time of the murder, it is highly improbable they could have noticed.

"The witnesses to the confessions, both before the police and the magistrate, deposed to their having been voluntarily made; but as recorded in the *futwa* of the law officer, it is quite evident that the witnesses to the Mofussil confessions had undergone a regular training, either by the police or the prosecutor and his party, as to what they were to say, otherwise they could not possibly have recollected the particulars so minutely related to them.

"Under the above circumstances, I cannot avoid entertaining doubts of the genuineness of the confessions, and the prisoners are entitled to the benefit of them; and I, in consequence, beg to recommend that they be acquitted."

Remarks by the Nizamut Adawlut.—(Present : Mr. A. J. M. Mills.)—"The evidence in this case appears to me too weak and suspicious to warrant a conviction.

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"The eye-witnesses, Deb Jenna and Deb Dey, have foully perjured themselves. They deposed to the sessions judge that they recognized *none* of the persons who entered the house and murdered their mistress, and they made the same declaration to the neighbours *immediately after* the departure of the murderers; on the *third* day, after the arrival of the darogah, and shortly after the appearance of the prosecutor at the scene of the murder, they deposed to recognizing several of the prisoners at the commission of the crime, and repeated this testimony to the magistrate. They are persons of low condition and under the immediate influence of the prosecutor, whose object seems to have been to convict, whether guilty or innocent, Nurhurry Chowdry and his brothers, the claimants to the property of the deceased. Rejecting the evidence of these witnesses, the only other proof against the prisoners is their Mofussil and foudaree confessions. They allege that their confessions before the darogah were extorted by violence and ill-usage on the part of the police, and the prosecutor; and there is some evidence, though not of a satisfactory kind, to their being maltreated; but the confessions themselves do not bear the impress of truth, they are too much alike to be genuine, and convey to the mind the impression that they are the statements of persons tutored to implicate certain persons. Further, they are open to all the objections stated by the sessions judge; and I agree with him in opinion that they have been obtained by unfair means. It is true the prisoners all avowed their participation in the murder when brought before the magistrate, and the judge remarks that it is difficult to account satisfactorily for their deliberately acknowledging themselves to have taken a part in a murder before such a functionary, but the confessions are of the same nature as the Mofussil ones, and are open to similar doubts and suspicions, and they may, I think, be fairly ascribed to promises and suggestions previously given, as is too often done in the Mofussil. In addition to these causes of distrust, there is another reason why the confessions should not be received, *viz.*, that they are unsupported by any circumstantial proof. The suspicion against the prisoners is certainly strong, but as I cannot bring myself to ground a penal sentence on the confessions, I acquit all the prisoners and direct their release."

PRESENT:

SIR R. BARLOW, BART., *Judge.*

GOVERNMENT

*versus*SHEIKH MOHOREEAIH (No. 3,) AND MUSST. SHOREE
(No. 4.)

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Case of
SHEIKH MO-
HOREEAIH and
another.

There being
no evidence
against the
prisoners but
their confes-
sions of privi-
ty to murder,
they were
convicted ac-
cordingly.

CRIME CHARGED.—Wilful murder of Beshee Ourut.
Committing Officer, Mr. Alexapder Abercrombie, officiating
magistrate of Mymensing.

Tried before Mr. R. E. Cunliffe, sessions judge of Mymensing,
on the 26th July 1852.

Remarks by the sessions judge.—“The prisoner No. 4 is
No. 3's second wife, and the deceased was his first wife, whom he
had married eight or ten years before, and it appears, from the
evidence of the witnesses, that the two wives were constantly
quarrelling, and that deceased's mother had been obliged to
complain to Sunkishur Sircar, the chief person of the village, that
No. 3 did not supply her daughter, the deceased, with food and
clothing.

“Early one morning in Jeyt, witness No. 9, seeing the pri-
soner's door shut, called witness No. 12 and then opened it,
when they observed the deceased lying under a *machan*, one
foot only visible, the body having been covered with earth thrown
up by rats and by rubbish, and the two prisoners not forth-
coming. They were searched for and found, No. 3 at a distance
of half a day's journey and No. 4 at half a *puhur's* distance.
In their answers before the police and the officiating magistrate,
they charge each other with the crime. In the Mofussil No. 3
said, that on coming home from his work at one and half *puhurs*
of the day remaining, not seeing deceased, he asked No. 4
where she was, who said she had gone to the north-east *para*
of the village, but not believing her, he went and searched
and found her under the *machan* in the state above described,
when on again asking No. 4 about her, she admitted having
killed her, and at her instigation went to her brother Aleo to
consult what was to be done, and was advised to hide the body
and conceal himself. No. 4 denied having killed the deceased,
and said that about 12 o'clock, the deceased having gone to the
jeel for water, No. 3 began to have sexual intercourse with her,
at which moment the deceased having returned and seeing it
got angry, and began to pull her cloth and abuse her, on which
No. 3 gave her a kick on the breast which knocked her down, and
then putting his left hand over her mouth squeezed her throat
with his right hand, from which she died and they hid the body,
and that No. 3 absconding without her she ran away about 12
o'clock P. M. In the foudjarce the prisoners made the same

statement. In this court No. 3 said he had married the deceased when very young, and the villagers telling him he would not be able to get on with her, he married No. 4, who used to tell him to divorce the deceased, to which he replied you have no son and if she has one, after her you will have half, to which she replied what will she do with a son; and named witnesses to prove quarrelling between No. 4 and the deceased, most of whom deposed accordingly; the fact is also proved by the evidence for the prosecution. No. 4 denied having killed the deceased, and said she had been unjustly apprehended by the villagers, and named witnesses to prove she had not killed the deceased, who knew nothing about the matter.

"The body was sent in, but as the crime was committed some days before the body was found, it was too much decomposed for the civil surgeon to state the cause of death.

"The *futwa* of the law officer convicts the prisoners on violent presumption of culpable homicide, but under the circumstances of the case, I am of opinion that the prisoners ought to be convicted on violent presumption of being accomplices in the murder of the deceased, and sentenced No. 3 to transportation for life, and No. 4 to imprisonment for life, with labor suited to her sex."

Remarks by the Nizamut Adawlut.—(Present: Sir R. Barlow, Bart.)—"The *futwa* of the law officer convicts the prisoners on presumption of culpable homicide; the sessions judge convicts them of being accomplices in murder. Nothing on the record, save the confession of Musst. Shoree, the second wife, shows how the deceased, Musst. Beshee, a girl of about twelve years of age, also a wife of the prisoner Sheikh Mohoreeah, met her death. In that confession she states that Sheikh Mohoreeah gave the deceased a kick on the breast. Musst. Shoree's allegations against Sheikh Mohoreeah are not legal evidence; but if her statement be true, the offence does not amount to murder, as the kick was given on alleged sudden provocation. Neither is the confession of Sheikh Mohoreeah, that Musst. Shoree on his return home, and seeing the corpse, told him she had killed the deceased, legal evidence against her, and there is no evidence on the record to prove when or how deceased was killed.

"The extent of the guilt of the prisoners can only be determined under the circumstances of the record from their own confessions, in which both of them admit their knowledge of the fact that the deceased was killed, which fact they concealed for some days, till they were apprehended. I convict them of privy to that fact, and sentence each to five (5) years' imprisonment, the male prisoner to labor in irons, the female to labor suitable to her sex."

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Case of
SHEIKH MO-
HOREEAH, and
another.

PRESENT :

W. B. JACKSON, Esq., *Judge.*GOONEE JHA, BABOONATH JHA AND HURUCK-
NATH JHA*versus*

LOKNATH SINGH.

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Case of
LOKNATH
SINGH.The court
saw no reason
to interfere
with the sen-
tence passed
on the pri-
soner.

CRIME CHARGED.—Riot with severe wounding.

CRIME ESTABLISHED.—Riot with severe wounding.

Committing Officer, Mr. R. C. Heywood, officiating magistrate
of Bhaugulpore.

Tried before Mr. R. N. Farquharson, sessions judge of Bhaugulpore, on the 1st June 1852.

Remarks by the sessions judge.—“Prisoner pleads ‘not guilty.’

“This is a continuation of the case described under No. 3, of Statement No. 6, for April last.

“Loknath Singh was apprehended in Tirhoot, on the 18th March 1852, *vide* witness No. 7, and kyfeet of thanna Dulsing Seraie, zillah Tirhoot. The proofs against him, as reported in the evidence of the principal witnesses to the trial, are full and sufficient. Loknath Singh was one of the most forward among the party that attacked Goonee Jha and his companions on the 19th November 1851. He was one of those armed with a sword, and is proved in evidence to have struck the blow or blows that disabled Goonee Jha's right hand for life. Loknath Singh is identified by all the witnesses now examined.

“The prisoner states, that he was absent from mouza Choppa at the time of the attack in question. None of the witnesses for the defence are forthcoming.

“The prisoner Loknath Singh is convicted by the jury with my full concurrence of the charge brought against him and is sentenced accordingly to seven (7) years' imprisonment with labor and irons.”

Remarks by the Nizamut Adawlut.—(Present: Mr. W. B. Jackson).—“I see no reason to interfere with the sentence passed on Loknath Singh.”

PRESENT :

W. B. JACKSON, Esq., Judge.

BISRAM, MALUNG JOLAHA AND MOSAFIR JOLAHA

versus

KASIM ALEE KHAN (No. 3), LOTON AHIR (No. 4),
PAREEKEE AHIR (No. 5) AND SUDASEE (No. 7).

CRIME CHARGED.—Nos. 3 to 5 and 7, highway-robbery attended with severe wounding of Bisram, Malung and Mosafir, prosecutors, and plunder of property to the amount of rupees 66-4-0; 2nd count, Nos. 3 and 5 having in their possession a portion of property, knowing the same to have been obtained by robbery.

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Case of
KASIM ALEE
and others.

CRIME ESTABLISHED.—Nos. 3, 4 and 7, highway-robbery attended with wounding; No. 5 having in his possession stolen property, knowing the same to have been obtained by robbery.

The conviction and sentence passed upon the prisoners upheld.

Committing Officer, Mr. R. J. Richardson, officiating magistrate of Sarun.

Tried before Mr. C. Garstin, sessions judge of Sarun, on the 12th June 1852.

Remarks by the sessions judge.—“ This is an aggravated case of highway-robbery attended with wounding, though not to such a degree as to endanger life; and the following is a brief statement of its main facts:—It appears that a party of seven cloth-dealers, who had been to the bazar at Panapore, on the evening of the 20th April last, were returning home thence, when crossing the Domree Nuddee, three of their number halted to refresh themselves whilst the others went on; and the latter had only just got beyond the river, when they were accosted by the prisoner Kasim Alee, who got a little tobacco from one of the party and then went towards his house, which was close at hand. They then went on and had got only a little (one *russee*) further, when they were addressed by the prisoner Loton (No. 4) and Sudasee (No. 7), and almost directly after were assaulted by a number of men, and were beaten, wounded and robbed of every thing they had, (even to the clothes on their persons,) when the robbers got clear off. Their companions after this came up, as did some other persons, and the wounded men being taken home, such of them as could go went off to the thanna, and there mentioned what had occurred (speaking of the prisoners Kasim Loton and Sudasee and a man named Chatru (fled) as having been engaged in the act), and the prisoners Kasim Alee and Loton being at once apprehended by the police (Sudasee was taken subsequently) search was made in Pareekee's (No. 5's) house, and some portion of the plundered property was found in it.

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and others.

Kasim Alee to the police admitted being cognizant of the robbery, and spoke of Pareekce and others as engaged in it, but to the magistrate he denied this, and on his trial here he says that the case has been got up from enmity. Loton and Sudasee make, generally speaking, the same defence, but none of them can satisfactorily disprove the strong case against them, and as they have been clearly identified from the first, there is not, in my opinion, the least doubt of their guilt. Pareekce is not identified as one of the party engaged, but it is fully proved that part of the plunder (some cloth, &c.,) was found in his house and though he says he had purchased it for his daughter's marriage, he cannot prove this; and I consider him guilty in the second count charged. The prisoner Jouree is not identified as having taken part in the affair, neither was anything found with him, and he appears to have been sent up in this case solely on account of the charge of arson which has been preferred against him and of which the particulars will be found in No. 1 of Acquittals for this month. He has of course been released in this case, whilst the prisoners Kasim Alee, Loton and Sudasee have been convicted in concurrence with the *futwa* of the highway-robbery, and Pareekce on the second count only; and they have all been sentenced for the crime established against them as noted in the preceding column."

Sentence passed by the lower court.—Nos. 3, 4 and 7, each to be imprisoned with labor in irons, for a period of fourteen (14) years, No. 5, for five (5) years.

Remarks by the Nizamut Adawlut.—(Present: Mr. W. B. Jackson.)—"The evidence against the prisoners Kasim Alee, Loton and Sudasee is conclusive as to the fact of highway-robbery with wounding, and as regards Pareekce, the finding of the stolen property is fully established. I see no reason to interfere with the sentence on these prisoners."

PRESENT :

R. H. MYTTON, Esq., *Officiating Judge.*

MUSST. KOMULLEE

versus

AMJAD.

CRIME CHARGED.—Attempting to sell the prosecutrix Musst. Komullee into slavery.

1852.

Committing Officer, Mr. E. F. Ratcliffe, joint magistrate of Noacolly.

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Tried before Mr. H. C. Metcalfe, sessions judge of Tipperah, on the 23rd July 1852.

Case of
AMJAD.

Remarks by the sessions judge.—“A difference of opinion between the Mahomedan law officer and myself relative to the merits of the accompanying case obliges me to lay it before the court for their consideration and orders.

Attempt to sell a person, even a slave, into slavery by a person not her owner, is, with reference to Section IV. Act V. of 1843, an offence, but the person so attempted to be sold, appearing to be assenting, nine months' imprisonment, considered to be more than adequate to the offence.

“The following are its leading features :—The prosecutrix, a female of a very low standard of intellect, appears to have been induced to accompany the deceased prisoner Tumeezooddeen to his house by a promise of marriage. In place of fulfilling his engagement, and, there is reason to believe, annoyed by her pregnancy, he, in association with the prisoner under trial, Amjad, sold the woman in the first instance, for the sum of Company's rupees eight, to one Arif Chowdry, a transaction she knew nothing of until it was concluded. Arif Chowdry happening to hear that a chupprasse, who is known to be a violent character, had a claim upon the woman dating prior to her connexion with the prisoner Tumeezooddeen, became alarmed, and at the expiration of some fifteen days returned her to the sellers.

“The prisoners now attempted to dispose of her a second time, and on this occasion offered her to the wife of one Ahmed Meeah for rupees six, but the latter declined to make the purchase in consequence of her husband's absence from home.

“The first eye-witness, Amir Khan Chowkeedar, happening to pass at the time, noticed the woman as a stranger and inquired her business. Her reply was a demand for assistance and rescue from the prisoners who were attempting to sell her. The chowkeedar appears to have endeavoured to detain them, as well as the woman, but they ran off and escaped for the time, and accordingly he took her alone to the thauna.

“Witnesses Nos. 2, 3 and 4 are servants in Ahmed Meeah's household, and they bear evidence to the attempt made by both prisoners to dispose of the prosecutrix by sale to their

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Case of
AMJAD.

mistress. Between their statements and that of the chowkeedar there is some immaterial confusion, far more apparent than real, as to what ensued when the chowkeedar interfered, and these are the discrepancies which, in the Mahomedan law officer's opinion, vitiate the entire case for the prosecution. They arise from the chowkeedar's describing the prisoners as escaping immediately on his appearance, whereas the witnesses depose that he took them into custody and that they thereafter ran away. The fact appears to be that he *did* arrest, or endeavour to arrest them, but that they absconded on quitting the house. In all material points, however, of the intended sale, the evidence is consistent, and it is to be remembered that the circumstance took place so long back as November last.

"The circumstantial evidence corroborates that furnished by the eye-witnesses and even the witnesses summoned on behalf of the prisoner, one of whom is his uncle, deposed to his active participation in the offence with which he is charged.

"The Mahomedan law officer acquits the prisoner in consequence of the discrepancies I have noticed in the evidence for the prosecution. I find him guilty, because I conceive the main and material fact sufficiently proved.

"The magistrate in his final proceeding alludes to a precedent furnished by the Sudder Nizamut's Decision, dated the 8th of May 1841, in the case of Government *versus* Musst. Golaub Peshagur and others. But the stress in that instance appears to have lain chiefly on the youth of the girls, their clandestine abduction from their relations, and the subsequent attempt to sell them, as a regular traffic, for an infamous purpose.

"The prosecutrix in the present case is of mature age, perhaps of twenty-five years, and fitted and intended for domestic service, and not for prostitution. But even with this alleviation, the case seems to me a cruel one, from the consequence of which the surviving prisoner, although apparently no party to the subterfuge by which she was originally induced to place herself in the power of his deceased companion, should not escape. The prosecutrix is precisely the description of female liable to be imposed upon. She is stolid and apathetic, and the probability is that these circumstances entered into the prisoners' calculations when they undertook their speculation with her.

"In the absence of any similar case to guide me, I am at a loss what degree of punishment to recommend, should the evidence appear to the court to maintain the indictment against the prisoner Amjad. But perhaps as he does not appear to have taken any share in the seduction of the prosecutrix from her former dwelling by a false promise of marriage, two (2) years' imprisonment, with labor, commutable by a fine of rupees fifty

(50), payable within a reasonable period, may not be considered an injudicious sentence."

1852.

Remarks by the Nizamut Adawlut.—(Present: Mr. R. H. Mytton).—"The selling of free-born persons into slavery is an offence by the Mahomedan law, as declared in a precedent of this court, vol. VI., page 4. The attempt to do so must, therefore, also be an offence. The prosecutrix, however, in this case, calls herself the *chokry* of Zukky Chuprassee. *Chokry* is the usual term in the eastern districts for a female slave, and the question arises whether such being the case, the selling of her by any one not her owner is an offence. The concluding section of Act V. of 1843 would make it so in my opinion.

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Case of
AMJAD.

"However in this instance no force, misrepresentation or deceit appears to have been resorted to. The offer for sale was open, after a previous sale had been effected, and the woman had made no effort to free herself, or objection apparently.

"To this second sale, which forms the subject of this trial, she appeared to be an assenting party, and put in a *razeenama* in the foudaree court soon after the occurrence. I convict the prisoner of the fact charged, and hold it to be an offence, but consider that the punishment already undergone, *viz.*, nine and half months is more than adequate. The prisoner will therefore be released.

"The court observes that the commitment was made on 2nd December, but the trial was not held till the 23rd July. The judge is requested to submit some explanation of the delay."

PRESENT:

W. B. JACKSON, Esq., Judge.

GOVERNMENT

versus

SHEIKH DAGOO.

CRIME CHARGED.—1st count, wilful murder of Hazaree Mirdah, son of Khasa Bewah; 2nd count, accessory to the above charge.

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CRIME ESTABLISHED.—Accomplice in the culpable homicide of Hazaree Mirdah.

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Case of
SHEIKH DA-
GOO.

Committing Officer, Zynooddeen Hossein, deputy magistrate of Maunickgunge, zillah Dacca.

Conviction
and sentence
affirmed.

Tried before Mr. C. T. Davidson, sessions judge of Dacca, on the 12th July 1852.

Remarks by the sessions judge.—"This case has been again brought under trial, in compliance with the resolution of the

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Case of
SHEIKH DAGOO.

court, No. 615,* dated the 1st May last, and the register's letter, No. 683, dated the 22nd idem. The above resolution and letter directed this court to take evidence to the point of Hazaree having died from the beating he received, a fresh defence from the prisoner and another *futwa* from the law officer, and to re-submit the case for the orders of the court. The following are the remarks of this court on the former trial :—'The prisoner is 'charged with wilful murder. The circumstances of this case

* *Resolution of the Nizamut Adawlut, No. 615, dated 1st May 1852.*

"The court having perused the papers connected with the case of the prisoner Sheikh Dagoo, and observing that three witnesses declare that the prisoner Sheikh Dagoo helped to beat Hazaree Mirdah, the deceased, and that others carried him away, and that they heard two days afterwards that Hazaree died of the beating, are of opinion that there is no proof that Hazaree died from the beating he received, and direct that the proceedings, which are incomplete, be returned to the sessions judge with instructions to take evidence on the point above indicated, and a fresh defence from the prisoner, and another *futwa* from the law officer, and submit his proceedings with those now returned for the court's orders."

With reference to the above resolution, the sessions judge of Dacca, submitted the following letter, No. 269, dated 11th May 1852 :

"I have the honor to acknowledge the receipt of the court's resolution, No. 615, dated the 1st instant, returning the proceedings of this court in the case of Sheikh Dagoo as incomplete, and directing me, in consequence of there being 'no proof, that Hazaree Mirdah died from the 'beating he received,' to take evidence on that point, a fresh defence from the prisoner, and another *futwa* from the law officer, and to re-submit the proceedings for the orders of the court.

"In reply I beg to state, for the information of the court, that two witnesses to the inquest held on the body of Hazaree Mirdah were examined at the trial and they deposed to marks of violence on the body of deceased. The evidence of the sub-assistant surgeon, whose testimony goes to show that the death of deceased was caused from the beating he received, was also recorded.

"On this evidence, ten prisoners were convicted and punished by me in this case in August last, and in appeal to the superior court, this conviction and the sentences passed by me, with some mitigation in respect to some of the prisoners, were upheld on the 3rd November last, as stated in my remarks on the trial of Sheikh Dagoo.

"It appears to me that the present orders of the court have been called for in consequence of the original record of the trial not having been before it, but in cases of this kind, where prisoners have been subsequently arrested and brought to trial, it never has been the practice to submit the original proceedings.

"Under these circumstances I beg to await the further orders of the court before giving effect to the resolution now under acknowledgment."

From the Register of the Nizamut Adawlut, to the sessions judge of Dacca, No. 683, dated 22nd May 1852.

"The court having had before them your letter, No. 269, dated the 11th instant, desire me to observe that the statement contained in the 2nd paragraph, that two witnesses to the inquest and the assistant surgeon

' were detailed in the Abstract Statement of prisoners punished, without reference, for the month of August last, from which the following is an extract :—' It appears from the statement of the prosecutrix, that on Sunday, the 29th of Jeyt last, the prisoner Wazeer Mollah (No. 6,) went to her house and asked her son Hazaree Mirdah (deceased,) to come and have his account with Madaree (prisoner No. 8) adjusted; that he accompanied the prisoner, but his return having been delayed for some hours she went to ascertain what had detained him; that on her arrival at Wazeer Mollah's house, she saw the prisoners Nos. 6, 7 and 14 dragging her son along the ground to a ditch outside the house, into which they threw him, and that Meajan and Tofanee carried him home; that he was not able to eat or drink, and remained senseless until the Tuesday following, when he died. There are four eye-witnesses who depose to having seen the deceased sitting among the prisoners at the house of Wazeer Mollah (prisoner No. 6); that they were engaged arbitrating a disputed account between him and the prisoner Madaree, who had been his servant for the last six or seven months, the latter claiming arrears due, while the former urged non-performance of service equal to amount wages advanced. The arbitration resulted in an award against deceased, when he jumped up and covered the arbitrators with abuse. On this he was seized and beaten until senseless, and then thrown into the ditch. It would seem, however, from the evidence, and from the confessions of the prisoners themselves, that the deceased, who was a servant of the zemindar, was an oppressive, tyrannical character, and that they had a host of grievances to avenge besides the immediate provocation that led to the assault which terminated fatally. With the exception of the prisoners Nos. 13 and 15, they all confessed both before the police and the deputy magistrate. No. 13 confessed in the Mofussil only. The evidence of the sub-assistant surgeon goes clearly to show that the body of the prosecutrix's son, Hazaree Mirdah, presented marks of severe injuries, as from blows of the fist, &c.; that blood was congested in the lungs,

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Case of
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GOO.

were examined on the trial and deposed to the point on which the court called for evidence, is at variance with the record of the case of Sheikh Dagoo, as well as with the copy of the calendar in that case, under your signature; if you mean that these men were examined on the trial of some former prisoners, not on the present trial, it is obvious that such evidence, not being given on the trial of Dagoo, cannot be received against him. In the calendar of the case of Dagoo only four witnesses are entered, and of these only three appear to have been examined; the witnesses to the inquest and the assistant surgeon are not among them. You are therefore requested to carry into effect the orders of the court contained in their resolution, No. 615, of the 1st instant."

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Case of
SHEIKH DA-
GOO.

‘and that in his opinion these injuries were the cause of his death. Three of the eye-witnesses who were formerly examined, have again attended this court and been re-examined and adhere to their previous statements. They recognize the prisoner (he is the father of Madaree, regarding the adjustment of whose wages the assault on deceased originated,) as having taken active part in the assault upon Hazaree Mirdah, deceased. The prisoner denies the charge, but has set up no good defence nor cited any witnesses to exculpate him.’ In obedience to the court’s orders, I have recorded the evidence of the witnesses to the inquest, who depose to having seen dark marks on the body of deceased. I have been unable to re-examine the sub-assistant surgeon, who conducted the *post mortem* examination, that officer having been removed to zillah Patna. A fresh defence has been taken from the prisoner which does not exculpate him. In concurrence with the *futwa* of the law officer, which convicts the prisoner of being an accomplice in culpable homicide, he has been sentenced to three (3) years’ imprisonment, with labor, redeemable by a fine of rupees fifty (50) to be paid within one month.”

Remarks by the Nizamut Adawlut.—(Present: Mr. W. B. Jackson.)—“I see no reason to interfere with the sentence passed on the prisoner Dagoo.”

PRESENT :

R. H. MYTTON, Esq., *Officiating Judge*.

GOVERNMENT AND MUSST. JHOONEA

versus

DHUNNEE.

1852.

August 21.

Case of
DHUNNEE.

Rape of a
girl ten years
old. Sentence,
seven years’
imprisonment
with labor in
irons.

CRIME CHARGED.—Rape on the person of the prosecutrix, a child of about ten years of age.

Committing Officer, Mr. F. A. Glover, officiating joint magistrate of Chumparun, zillah Sarun.

Tried before Mr. C. Garstin, sessions judge of Sarun, on the 30th July 1852.

Remarks by the sessions judge.—“I refer this case under the provisions of Regulation XVII. of 1817, as being one which I am not competent to dispose of myself.

“The following is a brief statement of the facts of the case as they appeared on the trial:—The prosecutrix, an intelligent child of about ten years of age, states, that whilst she was engaged picking up sticks in a field belonging to a person named Jhodee, the prisoner suddenly came to her from his garden, close at hand, and carrying her off into a hollow place close by, there forced

her down, and ravished her ; that she managed to cry out, and other persons coming up the prisoner left her, and ran off, when she was taken home to her parents.

" A man named Teeluk Koeree, who was at work near at hand, hearing the child's cries, ran towards the place and arrived in time to see the prisoner in the very act of forcing her, and as his statement of the occurrence is borne out and corroborated by that of another witness (Musst. Moonia) who also came up in time to see the prisoner making off, there is not the smallest reason to doubt its truth. Other parties (amongst them the mother of the prisoner himself) also depose to the fact of the child's being found injured and bleeding, and as this is backed by the evidence of the sub-assistant surgeon, who speaks most clearly to the crime having been consummated, the evidence against the prisoner is, I think, almost conclusive.

" Independent of this, however, both to the police and to the magistrate himself, he confessed his guilt, and though on his trial he only partially admits it, there is, in my opinion, no reason to doubt it. His story is that whilst he was pulling mangoes on a tree, the child came under it, and began to pick them up, and when he got down to prevent her, she begged him to let her take them and to have connexion with her ; that he refused at first to do this, but being over-persuaded by her, he had got upon her, when becoming alarmed by the cries of some children, he got off and escaped without having effected anything.

" The moulvee convicts the prisoner of the rape charged, and as, under all the facts of the case, I cannot but concur in this finding, I herewith forward the proceedings, and recommend, in the event of the court's taking the same view of the case, that the prisoner Dhuunnee be imprisoned with labor and in irons, for seven (7) years."

Remarks by the Nizamut Adawlut.—(Present: Mr. R. H. Mytton.)—"The offence of the prisoner is established most completely. The recommendation of the sessions judge is adopted."

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Case of
DHUUNNEE.

PRESENT :

R. H. MYTTON, Esq., *Officiating Judge.*

SHEIKH NAGUR

versus

SULTAN KHAN (No. 3) AND SUFDAR KHAN (No. 4).

1852.

CRIME CHARGED.—1st count, arson; 2nd count, privy to the above charge.

August 21.

CRIME ESTABLISHED.—No. 3 being an accomplice in the above charges; No. 4, arson.

Case of
SULTAN KHAN
and another.

Committing Officer, Mr. W. B. Buckle, magistrate of Sylhet. Tried before Mr. F. Skipwith, sessions judge of Sylhet, on the 14th May 1852.

Sentence of
five years' im-
prisonment
for arson, con-
firmed, the as-
sertion on
which appeal
was founded
being false.Remarks by the sessions judge.—“The prisoners are the zemindars of the prosegutor, and on the night of the 1st Phagoon 1258, desired his son to carry their shoes and *hookah* for them to a dinner party, to which they were going. He refused, and the prisoner Sultan desired his son, Sufdar Khan, to get some fire and burn their house, and this he did.“The house of a neighbour, Manoollah, is close by that of the parties, and he had four or five men in the house who had come to him for the purpose of accompanying him to a *zeiafut*. These men hearing the altercation came out and witnessed the whole transaction, but were afraid to interfere, as the prisoner had a stick in his hand.

“The prisoners in their defence state, that the prosecutor owed them rent, and that on their threatening to distrain for it he left the house, taking with him all his property and then set fire to it himself. But this he has failed to prove, and some of his own witnesses before the magistrate stated he was standing by while the house was burning, and that the prosecutor then said, the prisoner Sultan Khan had set it on fire. They called two witnesses only before this court, who could say nothing in their favor. I concur with the verdict of the assessors, who find the prisoner Sufdar guilty of arson and Sultan of being an accomplice.”

Sentence passed by the lower court.—Each to be imprisoned for five (5) years with labor in irons.

Remarks by the Nizamut Adawlut.—(Present: Mr. R. H. Mytton.)—“The prisoners appeal, repeating their statement in sessions, that the prosecutor set fire to his own house, and adding that their defence was proved by evidence in the foudardar. This is contrary to fact. The appeal is rejected.”

PRESENT :

R. H. MYTTON, Esq., *Officiating Judge.*

MUSST. ARJOO

versus

AMIRUDDEE.

CRIME CHARGED.—Committing rape on the person of the prosecutrix.

1852.

Committing Officer, Mr. E. F. Radcliffe, joint magistrate of Noacolly.

August 21.

Tried before Mr. H. C. Metcalfe, sessions judge of Tipperah, on the 24th July 1852.

Case of

AMIRUDDEE.

Remarks by the sessions judge.—“The prosecutrix, a widow of probably twenty-seven years of age, who has resided since her husband’s death in the same homestead with her brother, but in a separate hut, was sleeping on the night of the 20th of March, with her young child. About midnight she was awoken by the prisoner opening the door and entering the room. She endeavoured to give the alarm, which the prisoner attempted to prevent by closing her mouth with his hand, and by entreating her to be silent. He then commenced* to ravish her, when her brother Amiruddee, (witness No. 10,) who had been aroused by the alarm she had given, hastened from his own hut into hers. The prisoner instantly escaped, but the witnesses Nos. 1 and 2, who are the village chowkeedars and were passing by at the time, seized him.

Rape. Sentence seven years’ imprisonment with labor and irons. The niceties of the English law, with regard to proof of the crime, are, as ruled in the case reported at page 215, vol. 3, irrelevant.

“The evidence in support of the charge consists of the parties who seized him, of the prosecutrix’s brother, witness No. 8, and of witnesses Nos. 9 and 10, who hearing the disturbance in the house, hastened thither, saw the prisoner in custody, and heard from the prosecutrix that he had forcibly violated her person.

“The prisoner is a stranger to the village in which the prosecutrix resides, and lives at a considerable distance from it. He appears to have been temporarily employed in the neighbourhood as a mallee by the ameen who is measuring a part of pergunnah Bhulloah.

“At the thanna and before the magistrate he admitted having had complete sexual connexion with the prosecutrix, but asserted that it was with her entire consent, and that the intimacy had existed for twenty or twenty-five days. His confession at the thanna alludes to her as a person whose name he does not know, obviously an inconsistency, if such close intimacy had really existed.

* “Arumbho.”

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August 21.

Case of
AMIRUDEE.

"In the sessions court he pleaded 'not guilty' of violation of the prosecutrix's person, re-asserting that he had visited and had complete connexion with her by her own invitation and consent. He declined, however, the evidence of the three witnesses who were awaiting examination on his behalf.

"The Mahomedan law officer's *futwa* states that the attempt forcibly to violate the prosecutrix's person was established by the evidence, the prosecutrix's statement, and the prisoner's confession.

"The prosecutrix, a modest and diffident woman, alluded to what had occurred with evident pain and shame, and in my opinion strove to render the amount of injury she had sustained much less than it really was. But I consider, in spite of the difficulty this desire to avoid exposure throws in the way of the full conviction of the prisoner, that more than the attempt to perpetrate the crime has been duly established. Consummation appears to have taken place, to the extent of penetration, at least, which is sufficient to constitute the crime of rape.

"I have already said that the prosecutrix has the character, and to all appearances justly, of being a virtuous woman. Her statement was given very confusedly in consequence, it seemed to me, of her feeling her position painfully, and the court will observe a contradiction, which, under other circumstances, would be a serious one, between her deposition before the magistrate and myself. In the former instance as well as at the thanna, she stated that two persons entered her house, and that the other, not the prisoner, closed her mouth.

"Before me she spoke of but one, the prisoner, and when questioned as to this discrepancy, she attributed it to forgetfulness and stated that two persons had entered her hut.

"Should the court be pleased to consider the prisoner satisfactorily convicted of having prosecuted the act so far as to constitute the actual crime of rape, I would beg to recommend that he should be sentenced to seven (7) years' imprisonment with labor in irons. If the attempt only be considered established, imprisonment for five (5) years, with labor in irons, may be considered sufficient."

Remarks by the Nizamut Adawlut.—(Present: Mr. R. H. Mytton.)—"The offence charged is, with reference to the precedent of this court printed at page 215 of vol. 3, proved. The prisoner is, therefore, convicted, and the recommendation of the sessions judge that he be sentenced to seven (7) years' imprisonment, with labor and irons, adopted."

PRESENT:

R. H. MYTTON, Esq., *Officiating Judge.*

KHOOB CHAND JAHOOORY

versus

SHEIKH JAFFUR (No. 1), HUNOOMAN SINGH (No. 2), SHEIKH KABIL (No. 3), MANICK GAZEE (No. 4) AND PURSOODDY, ALIAS PURRUBDY (No. 5).

CRIME CHARGED.—Swindling the prosecutor out of cash to the amount of rupees 201.

Committing Officer, Mr. E. A. Samuells, magistrate of the 24-Pergunnahs.

Tried before Mr. E. Bentall, additional sessions judge of the 24-Pergunnahs, on the 31st July 1852.

Remarks by the additional sessions judge.—“The prosecutor was induced by the dalal Hunooman Singh, (prisoner No. 2,) to go from his own shop in the Burra Bazar, in Calcutta, to Seal-dah, in the thanna of Intally, in the 24-Pergunnahs,—to buy coral. The first time that he went he could not see the owner of the coral but he gave one rupee earnest. The next morning he went again and was shown a sample of the coral, but was told to come in the evening, with rupees three hundred in cash, as the coral had been pledged for that sum. In the evening he went again with witnesses Nos. 1 and 2, and then, after dark, without seeing the coral, he was over-persuaded to agree to give seven hundred rupees for one thousand two hundred *bhurree* of coral, but he found out when he got into his carriage with it that one of the three bundles contained artificial coral and the other two contained bits of brick. If the artificial coral were genuine it would be worth from rupees three to five by *bhurree*, and its being sold so mysteriously and secretly, in such a place, after sunset, for so very low a price, by a number of coolies, gives strong reason to suspect that the prosecutor thought he was buying stolen property at a very cheap rate. When the prosecutor was starting to go home, prisoner No. 2 was going with him inside the carriage, which he scarcely would have done if he were aware of the trick. Prisoner No. 1 was outside the carriage, and was starting with the party under pretence of receiving the rupees five hundred which were due, and he was apprehended before he could escape.

“The prosecutor and his party first drove to Burra Bazar and refreshed themselves, and thence went to the thanna with the prisoners Nos. 1 and 2. This was on the 19th of March, and on the 21st the prisoners both confessed that they were accomplices in the transaction, but the next day Hunooman gave a different version of it before the magistrate, and I think it is very probable that he was a dupe of others. Jaffur again confessed that he was an accomplice.

1852.

August 21.

Case of
SHEIKH JAF-
FUR and
others.

Swindling.
Sentence two
years' impris-
onment with
fine, commut-
able to labor,
and fine of
rupees one-
hundred,
under Act
XVI. of 1850.
A fine under
that law can
only be levied
for re-im-
bursement of
the aggrieved.

1852.

August 21.

Case of
SMITH JAFFUR and
others.

" Kabil was apprehended on the 26th of March, and he confessed on the 28th before the police, and on the 29th before the magistrate. He was recognized by the prosecutor and his two witnesses as of the party of swindlers.

" Manick was apprehended on the 1st of April, and confessed before the police on the 3rd, but he denied his guilt before the magistrate. The prosecutor and his witnesses recognize him among the swindlers.

" The prisoner Pursooddy, *alias* Purrubdy (No. 5,) is recognized by only one witness and by the prosecutor: each specifies an act performed by him as a leader in the transaction. It was evening at the time, and they were not acquainted with his person, but he was mentioned before the magistrate in the confessions of the prisoners Nos. 1 and 3, and so was one Burkut mentioned by No. 3, but although the prosecutor said he did observe Burkut at a distance, no witness said that he recognized him, and he was not accused as this prisoner was. I think, therefore, that the evidence of the two men, *viz.*, of the prosecutor and witness, against this man, may be trusted, and I convict him of swindling the prosecutor out of rupees two hundred and one, and would give him the same punishment as the others, *viz.*, imprisonment for one (1) year, and a fine of rupees fifty (50), or to labor until the fine be paid: and I would also fine him jointly with the others rupees two hundred and one (201,) under Act XVI. of 1850, to be paid to the Government and no part of it to the prosecutor."

Remarks by the Nizamut Adawlut.—(Present: Mr. R. H. Mytton.)—" I concur with the sessions judge that there is sufficient evidence to convict Purrubdy, corroborated as it is by the foudaree confessions of Jaffur and Kabil, and the Mofussil confession of Manick. Supposing the account of the transaction in these confessions to be true, which I see no reason to doubt, this prisoner was the originator of the scheme, and at his house the meetings of the conspirators took place. The term of imprisonment proposed by the sessions judge is in my opinion inadequate to the offence. The prisoner is sentenced to two (2) years' imprisonment and a fine of rupees fifty (50), commutable, on non-payment, to labor, and a fine of rupees two hundred and one (201) to be levied as directed in Act XVI. of 1850, from him and his convicted accomplices jointly and severally, and to be paid, if recovered, to the prosecutor.

" Had I been dealing with the case as regards all the prisoners, the sentences would have been very much severer than those passed.

" The sessions judge, in issuing his own warrants against the other prisoners, will direct that the amount of fine under Act XVI. of 1850, be paid to the prosecutor; a fine under that law can only be imposed for the purpose of reimbursement of the aggrieved."

PRESENT :

J. R. COLVIN, Esq., *Judge.*

MIE TSYNKRAWME

*versus**

TSING-ROUNG-FWE.

CRIME CHARGED.—Culpable homicide of Oungfawree.

CRIME ESTABLISHED.—Culpable homicide.

Committing Officer, Captain Tickell, principal assistant commissioner of Akyab.

Tried before Captain A. P. Phayre, commissioner of Arracan, on the 20th May 1852.

Remarks by the commissioner.—“ This case occurred in a suburb of the town of Akyab. Prisoner appears, from some unexplained cause, to have been on bad terms with the deceased. On the 30th of December 1851, the deceased and two others met or overtook prisoner on the road, and beat him with their fists. One of them had hold of prisoner’s hair; prisoner pulled out a small knife, and while struggling, cut the deceased a jagged wound in the left arm. Deceased was taken to the hospital, where he died of lock-jaw, produced from the above wound, on the 9th January following. Although the prisoner was first attacked by the deceased and others, and the death of the wounded person could scarcely have been expected from the bare wound itself, yet, as wounding and homicide cases are very common in the town of Akyab, I considered it expedient to pass as severe a sentence as was in the power of the court.”

Sentence passed by the lower court.—Imprisonment for seven (7) years, with labor and in irons.

Remarks by the Nizamut Adawlut.—(Present: Mr. J. R. Colvin.)—“ This case has been considered together with the explanation given in the commissioner’s letter,* No. 35, of the

* *Extract from a letter from the Register of the Nizamut Adawlut to the Commissioner of Arracan, No. 902, dated the 2nd July 1852.*

You are requested to submit for the court’s inspection, in original, the proceedings connected with the commitment of the prisoner Tsing-rong-fwe, and explain how a sentence of such severity as seven (7) years’ imprisonment, with labor and irons, was reckoned appropriate in the case, when an apparently wanton and threatening attack had been made on the prisoner by three men.”

From the Commissioner of Arracan to the Register of the Nizamut Adawlut, No. 35, dated 13th August 1852.

“ I have the honor to acknowledge the receipt of your letter No. 902, dated 2nd July last, and to submit in original the proceedings connected with the commitment of the prisoner Tsing-rong-fwe, charged with the culpable homicide of Oungfawree.

1852.

August 23.

Case of
TSING-ROUNG-
FWE.

Sentence, by the commissioner on conviction, of imprisonment for seven years, with labor in irons, for culpable homicide, reduced by the Nizamut Adawlut to imprisonment for two years, with labor without irons, the prisoner having used his knife only on his having been suddenly seized and beaten by three persons, and the wound inflicted by him not having been one, from which death was naturally to be expected.

1852.

August 19.

Case of
TSING-ROUNG-
FWE.

13th instant. The use of his knife by the prisoner was, doubtless, not justifiable, for the assault on him was not of a violent or dangerous kind, and it was made in the day time, and in the town of Akyab, where he could readily have called for assistance. On the other hand, the prisoner is not justly to be treated as if he had commenced the scuffle: he drew his knife when suddenly seized and beaten by three persons, and the wound was not one, from which death was naturally to be expected.

"On the whole, I think a sentence of imprisonment for two (2) years, with labor, but without irons, adequate to the offence, and reduce the sentence passed by the commissioner accordingly. The two years to be reckoned from the date of the commissioner's sentence."

"With reference to the sentence of seven (7) years' imprisonment with labor and irons, I beg to explain that as the crime was committed in the town of Akyab, a sentence of such apparently extreme severity was passed, solely with reference to the number of cases of wounding and killing which have occurred in the town of Akyab during the last three years; and because of my conviction that severe examples are, with reference to the frequency of reckless assaults with wounding in that town, necessary in all cases of conviction. It is true that in the present case prisoner was first set on by deceased and others, but the fact of his having a small knife about his person (which is seldom carried among this population for a lawful purpose), his drawing it forth and his undoubted readiness to use it vigorously, had he had the full use of his arms at the moment, appeared to me, coupled with the frequency of such crimes in the town of Akyab as above-mentioned, to require a heavy sentence."

PRESENT:

J. R. COLVIN, Esq., Judge.

R. H. MYTTON, Esq., Officiating Judge.

MOHES CHUNDER GOOHO

versus

ALEE MAHOMED (No. 1), SHEIKH MANOOLLAH (No. 2), OOZEER MAHOMED (No. 3) AND KUDRUTOOLLAH (No. 4).

CRIME CHARGED.—1st count, wilful murder of Ramcoomar Goohe; 2nd count, accomplices to the same; 3rd count, accessories both before and after the commission of the crime.

Committing Officer, Mr. T. B. Mactier, joint magistrate of Furreedpore, zillah Dacca.

Tried before Mr. C. T. Davidson, sessions judge of Dacca, on the 16th July 1852.

Remarks by the sessions judge.—“The circumstances of the case are as follows:—On the 20th February last, the deceased went to Ghuttee Jote to collect his rents. The prisoners, who hold lands within the jote, were unwilling to discharge their rents at that moment and promised to pay on a future day. The evasion of prompt payment appears to have incensed the landlord (deceased), who, in consequence, made use of irritating and abusive language towards the prisoners, when they set upon him and killed him on the spot.

“Six eye-witnesses have been examined (Nos. 1 to 6) whose evidence goes to show that deceased was sitting in the house of one Husamdee collecting his rents; that the prisoners and other *ryots* were there also; that a dispute arose between the prisoners and deceased regarding their rent, when the prisoner No. 6 seized him, and threw him on the ground, and held him by the throat while the other three beat and kicked him till he was dead; and that they then carried his body to the south of the said Husamdee’s house where it was found by the police.”

“The witnesses to the inquest depose to having inspected the body of Ramcoomar Goohe, and seen the marks of violence thereon, and also of the pressure of fingers on the throat. In their opinion strangulation was the cause of death. The evidence of the sub-assistant surgeon, in consequence of his removal to Patna, was not taken before this court. His original *post mortem* report and deposition, recorded by the committing officer, have been placed on the record of the trial. He states that he found the heart and liver ruptured, and ribs fractured, &c.,

1852.

August 24.

Case of
ALEE MAHOMED and
others.

Wilful murder committed immediately, though with circumstances of much cruelty, under provocation apparently, from the employment by the deceased of course terms of abuse towards one of the four prisoners. Sentence, transportation for life, as regards all the prisoners.

1852.

August 24.

Case of
ALEE MAHO-
MED and
others.

and marks of strangulation on both sides the throat, and that in his opinion deceased came by his death from strangulation and the other injuries described by him.

"The defence set up by the prisoners does not exculpate them, and the *fatwa* of the law officer convicts them of being accomplices in culpable homicide and declares them liable to *deeyut*.

"It is shown on the record that the *jote*, regarding the rent of which the dispute arose, was formerly the property of the prisoners Nos. 6 and 7, and that they sold it to Ramruttun Baboo, they and the other prisoners, who are relations, becoming the Baboo's tenants; that subsequently the deceased purchased the *jote* from Ramruttun and raised the rent upon them, and that enmity has existed between them ever since. From this it would seem that the dispute on the 20th February was not the only exciting influence which led to the fatal outrage.

"I would convict the prisoners of being accomplices in an aggravated culpable homicide, and considering that one or two similar cases of the agents of land owners having been killed by their tenantry have occurred in the district of Furreedpore, I would recommend a sentence of fourteen (14) years' imprisonment, with labor in irons."

Remarks by the Nizamut Adawlut.—(Present: Messrs. R. H. Mytton and J. R. Colvin).—MR. R. H. MYTTON.—"The prisoners in this case were tried for wilful murder. The *fatwa* acquitted them of this, and found them guilty of culpable homicide.

"The law officer does not state, and was not asked, as he should have been, his reason for coming to the conclusion he did, but it can only be presumed that he did so because no mortal weapon was used.

"By Section LXXV. Regulation IX. of 1793, we are directed to disregard such distinctions as to the mode of committing murder, and to look to the intention of the criminal as fairly inferrible from the nature and circumstances of the case.

"It is clearly proved in this instance that the prisoner Alee Mahomed seized the deceased by the throat, threw him down, and held him by the throat with both his hands, while he pressed his chest with his knee, and the other prisoners kicked and beat him. The injuries inflicted on the body were fracture of all the ribs on both sides from the second downwards, and of the sternum, the heart and liver being ruptured by the points of the broken ribs. The throat showed that the deceased was also strangled by pressure of the fingers, and the marks of the nails were visible after death. Setting aside the distinction of the Mahomedan law above referred to, the offence of the prisoners cannot but be considered to amount to wilful murder. Regarding the provocation given to the prisoners by deceased, we have not very clear evidence. The witness Hossein (No. 5,) states that

deceased said to Alee Mahomed 'you shall pay your rent to-day or give up your wife.' Soon after this (but not immediately apparently) the scuffle commenced, when this witness came out, and saw what was taking place,—Alee Mahomed had the deceased down, and was kneeling on him, holding him by the neck, while the others kicked and beat him.

"The only witness, who saw the commencement of the attack on deceased, is Panchoo. He does not in the sessions state that any very irritating language was used by deceased, but in the foudaree court he deposed that deceased abused Alee greatly, without mentioning the terms however.

"The deceased was at the time alone, and unprotected; he was treated with most brutal violence; and, therefore, even giving the prisoners the advantage of the doubt as to the provocation, *i. e.*, as to the precise terms of abuse addressed to one of their party, no sentence, short of transportation for life, is, in my opinion, adequate to the offence."

MR. J. R. COLVIN.—"This is a case, in which the sessions judge, agreeing with his law officer in convicting the prisoners of culpable homicide, was of opinion that the culpable homicide was of an aggravated kind, which required a more severe punishment than it was competent to him to award, and, on that ground, he referred the case, with a view to a higher sentence being passed by this court.

"The judge, before whom the trial came, considered the facts, *as to the proof or nature of which there is no difference of opinion*, to require in law a conviction of murder, and has sent the case for another voice.

"It does not seem to me to be strictly necessary, under the law and the resolutions of the court by which it has been construed, to have two voices upon a matter of this kind, in which there is no conflict of opinion as to the facts established, but only as to their legal character and effect. But I have examined the record, as one upon which a second opinion is thought, at least, desirable by another judge.

"I entirely concur with Mr. Mytton in thinking that the conviction can only be for murder. There was an evident intent to kill, and the intent was effected with circumstances of gross ill-treatment and violence. Such provocation as was given by the coarse abuse, which may have been employed by the deceased towards Alee Mahomed, (prisoner No. 6 of the calendar) (there is not distinct evidence of the exact words that were used,) could not supply an extenuation, which would justify any minor conviction for so determined and cruel a taking of life. There is also, as noticed by the judge at the close of paragraph 7 of his letter, evidence of probable malice towards the deceased on the part of the two first prisoners, from causes other than the mere

1852.

August 24.

Case of
ALEE MAHOMED and
others.

1852.

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Case of
ALEE MAHO-
MED and
others.

sudden heat or irritation arising at the moment from the abusive expressions, whatever they were, which were spoken by the deceased.

"My only doubt has been whether the prisoner, Alee Mahomed, who took the leading part in the assault and outrage, should not be sentenced capitally.

"I am willing, however, to concur in the sentence of transportation for life, which has seemed sufficient to Mr. Mytton, as regards all the prisoners."

MR. R. H. MYTTON.—"The sessions judge in this case acquitted the prisoner of the wilful murder and convicted him of culpable homicide. I consider that a single judge of the Nizamut Adawlut cannot, in opposition to the acquittal of the sessions judge, convict for the higher offence, with reference to Clause 5, Section IV. Regulation IX. of 1831. The resolutions of the court do not, in my opinion, cover such a case; therefore I sent it on for another voice."

PRESENT:

A. J. M. MILLS, Esq., *Officiating Judge.*

GOVERNMENT

versus

RADHA PATUR (No. 12), CHUNDER KISHORE ROY
(No. 13) AND KOMLAKANT SHA (No. 14).

1852.

August 27.

Case of
RADHA PATUR
and others.

The prisoner was acquitted by the Nizamut Adawlut, concurring with the sessions judge, in dissent from the zillah law officer.

CRIME CHARGED.—No. 12, 1st count, wilful murder of Sheikh Adoo Khan; 2nd count, riotously and illegally assembling, attacking *haut* Sumbhoogunge, killing Sheikh Adoo Khan, severely wounding Sheikh Soomeer and committing arson. Nos. 13 and 14; 1st count, being accomplices in the above; 2nd count, ordering the above crimes.

Committing Officer, Mr. Alexander Abercrombie, assistant, exercising the powers of a joint magistrate, at Jumalpoore, zillah Mymensing.

Tried before Mr. R. E. Cunliffe, sessions judge of Mymensing, on the 12th July 1852.

Remarks by the sessions judge.—"From the evidence for the prosecution, it appears that disputes existed between the proprietors of Sumbhoogunge and Juggutgunge *hauts* (only separated by a small *nullah*), from the *haut* days being the same, and it is alleged that the latter was the last set up. By the eye-witnesses it is stated that on the day in question, a body of men crossed over from Juggutgunge to attack Sumbhoogunge *haut* headed by the prisoner, one of the shop-keepers of the rival *haut*, and Chunder Kishore Roy (acquitted), and on the deceased and Sheikh Soomeer remonstrating, they ordered them to be beaten, and accordingly they were speared by one Radha Patur (con-

victed), from the effects of which deceased died in hospital. The prisoner denied the charge, and alleged that it had been made against him out of spite as he had left the Sumbhoogunge *haut* and gone to the rival *haut*; that on that account they had before tried to get him punished on a false charge of robbery, which was dismissed by the magistrate, to which he referred; and that he was at that time at Jumalpoore, to which his witnesses deposed. The law officer convicts the prisoner of ordering and aiding and abetting in the culpable homicide of Adoo Khan and wounding Sheikh Soomeer, and attacking and arson in the Sumbhoogunge *haut*. I do not concur in this verdict, not only on account of the evidence adduced for the defence, but because there is, from the circumstances of the case, great probability that the prisoner has been falsely charged on account of having left Sumbhoogunge and gone to the opposite *haut*. He is a shop-keeper, a person who is not very likely to take part in such an affair, and that his leaving Sumbhoogunge *haut* was much against the will of the proprietor of it is proved by the case to which he has made reference, in the *roobukaree* of which it is stated he was obliged to call in the aid of the police to enable him to go. I therefore submit that he should be acquitted."

Remarks by the Nizamut Adawlut.—(Present: Mr. A. J. M. Mills.)—"I concur in the remarks of the sessions judge and in the view he has taken of this case. There is much room for doubt, and the prisoner is entitled to the benefit of it. I accordingly acquit him and direct his release."

PRESENT:

R. H. MYTTON, Esq., *Officiating Judge*.

MUSST. JANAH DASSEE

versus

SHEIKH RUMZANNEE (No. 7, APPELLANT), NUJINDEE (No. 8), SHEIKH SHAKLAM (No. 9), GOONZE (No. 10, APPELLANT), JUGDIS SURMAH (No. 11), JOTRA-NATH (No. 12, APPELLANT) AND SHEIKH SULLIM (No. 13).

CRIME CHARGED.—1st count, burglary and theft of property in the house of Gourkishore Doss, master of the prosecutrix, on the 24th December 1851; 2nd count, privy to the above crime; 3rd count, knowingly receiving and having in possession the stolen property obtained by the above burglary.

CRIME ESTABLISHED.—Burglary and theft.

1852.

August 27.

Case of
RADHA PATUR
and others.

1852.

August 27.

Case of
SHEIKH RAM-
ZANNEE
(appellant)
and others.

A plea that
witnesses
were not exa-

mined on the part of appellant at the trial over-ruled, as it appeared that in answer to questions by the magistrate and sessions judge, the appellant affirmed that he did not wish for any evidence to be taken.

1852.

August 27.

Case of
SHEIKH RAM-
ZANNEE
(appellant)
and others.

Committing Officer, Mr. W. B. Buckle, magistrate of zillah Sylhet.

Tried before Mr. F. Skipwith, sessions judge of Sylhet, on the 8th June 1852.

Remarks by the sessions judge.—“This case is rather a singular one. The prosecutrix states, that on the 10th Poos, the prisoner Goonze Dhobee told the chowkeedar, Dookul Mallee, who was in charge of the house and property of her master Gourkishore, that if they were negligent nothing would be left in the house, and this statement is confirmed by Dookul. At night she awoke and discovered that a box close to her had been opened and robbed, and calling Dookul they discovered the house had been burglariously entered. Dookul went the next morning to the thanna, gave in a list of the property stolen, and said he suspected Goonze Dhobee, but did not wish his house to be searched, nor did he in his petition beg the darogah to hold any inquiry. The darogah, however, started to the spot and apprehended Goonze Dhobee, who denied the charge, and also, on the petition of Dookul, searched the houses of several parties, but unsuccessfully, and he from time to time, reported his proceedings to the magistrate, and at last was directed by him to send in the parties whose houses he had searched. This was done, and they were acquitted.

“When the darogah's first investigation was unsuccessful, he sent notice of the robbery to the neighbouring thannas, together with a list of the property stolen, and on the 19th Magh, or 29th January, the acting mohurir of Goein Ghat reported that he had obtained a clue to the robbery by means of Hyder Chowkeedar, and he was desired to investigate the case, and in consequence the prisoners, with the property, were apprehended.

“Hyder's story is, that the prisoner Sullim (No. 13) told him of the robbery, and that the prisoner No. 7, Nujendee, had merely given him a piece of Sultanee cloth to make up, and this, on being questioned by the mohurir, he told him also.

“Rumzannee confessed to the burglary before the mohurir, and named his associates, and he stated that the nose-ring and necklaces worn by his two wives were made of the stolen property by a silversmith named Gopalram. This confession was sworn to have been voluntarily made, and Gopal deposes, that at the end of Poos the prisoner gave him old silver to make them with. The cloth he said he had given to Sullim to make up. Sullim admitted that he had received the cloth from Rumzannee to make up, and that he afterwards brought the articles to him to conceal. These he afterwards produced and gave to the police.

“The other prisoners, Nos. 8 to 12, confessed both before the mohurir and the magistrate, that they had accompanied Rumzannee to the house of the prosecutrix, but that they remained under a tree while the robbery occurred. They received each a share of the spoil, and produced the articles to the police.

1852.

August 27.

Case of
SHRIKH RAM-
ZANNEK
(appellant)
and others.

"Before this court the prisoners denied the theft, and stated that the mohurir had extorted their confessions by ill-treatment, and some said the police placed the stolen articles where they were found, but four only, Nos. 8, 9, 11 and 12, called witnesses, who, however, stated nothing in their favor, other than that they had not before been convicted. Ramchurn Roy, the land-holder Nujindee, (prisoner No. 8), called by him to his defence, deposed to seeing the prisoner produce the stolen property of his own accord and give it to the police.

"The jury find the prisoners Nos. 7 to 12, guilty of the burglary and theft, and of aiding one another in its perpetration, and of being knowingly in possession of stolen property, and the prisoner No. 13, of being an accessory after the fact, and of being in possession of stolen property. I consider, however, the confessions of Nos. 8 to 12 to prove them only accomplices, but in the rest of their verdict I acquiesce.

"The confessions of the prisoners were made to the mohurir voluntarily and were repeated by all but the prisoners Nos. 7 and 13, before the magistrate, otherwise the case would have seemed suspicious, as the property was produced at night.

"The prisoner No. 7 has been charged before the magistrate three different times with theft, but was acquitted, but he has been imprisoned three times in default of finding security for his good behaviour.

"The prisoner Sullim has been once before convicted."

Sentence passed by the lower court.—No. 7, five (5) years' imprisonment with labor in irons; Nos. 8, 9, 10, 11 and 12, each to two (2) years' imprisonment, with labor in irons, and No. 13, to three (3) years' imprisonment, with labor in irons.

Remarks by the Nizamut Adawlut.—(Present: Mr. R. H. Mytton).—"The prisoners Nos. 7, 10 and 12, have now appealed. The plea of No. 7, Rumzannee, is alone worthy of notice; he states that his confession was extorted, and that his witnesses in the foudaree court proved that he was maltreated. It is true that his witnesses deposed to seeing him bound and beat, but on being asked whether he wished any witnesses to be summoned on his part at the sessions, he answered in the negative, and expressed no desire at the trial in the sessions that any witnesses should be examined on his behalf. There is other circumstantial proof against this prisoner, and every necessary opportunity was afforded him to produce any evidence he desired. I therefore do not consider that there is any sufficient ground for interference. The appeals of all three prisoners are rejected."

PRESENT :

R. H. MYTTON, Esq., *Officiating Judge.*

BHOLANATH JASOO

versus

RAM MALEE (No. 1) AND OBHOY BAUGH (No. 2).

1852.

August 27.

Case of
RAM MALEE
and another.Privy to
murder for the
sake of orna-
ments. Sen-
tence, four-
teen years'
imprisonment,
with labor and
irons.

CRIME CHARGED.—Nos. 1 and 2, 1st count, wilful murder of Huro Kyburteenee for the sake of her ornaments, value Company's rupees 4-9½; No. 2, 2nd count, with having feloniously acquired by the wilful murder of Huro Kyburteenee and having pledged the aforesaid bracelet to Motee Tilenee for the sum of Company's rupees 3.

Committing Officer, Mr. E. Jenkins, magistrate of Howrah, zillah 24-Pegunnahs.

Tried before Mr. E. Bentall, additional sessions judge of the 24-Pegunnahs, on the 10th August 1852.

Remarks by the additional sessions judge.—“Huro Kyburteenee had a house in Korroth Kashandee, and another fifty beegahs off, which is also two or three beegahs from a garden of Lochun Satra, in which Ram Malee (the prisoner No. 1) works. Her son says that she wore ornaments worth rupees 31-8-0. Two witnesses, Nos. 18 and 19, state, that Ram Malee enticed Huro to go to his garden in the morning of the 28th of June. She was missing during the remainder of that day, and her body was found the next morning in a ditch of the prisoner's garden, and her throat had been cut from ear to ear. There were also, as witnesses Nos. 5 and 8 state, and according to the *sooruthal*, marks of blood having been spilt about ten cottahs from the prisoner's house. When Ram was apprehended, he accused the prisoner No. 2, Obhoy Baugh, who was immediately apprehended. When the body had been sent to the station, Ram (No. 1) deposed before the police, that Obhoy had killed the woman, and he saw him drag away the body, and that he had a knife about his person, and that he was told not to speak of the affair, and the next day he deposed to the same effect before the magistrate. If it could be trusted that he had called away Huro to his garden, this confession of privy, added to the evidence, would be sufficient to convict him of being an accomplice in the murder, but I do not feel satisfied that he did entice Huro, as it is not likely that he should have done so before witnesses, and particularly as witness No. 20, who helped to find the body and who went out for the purpose with the prosecutor, had not heard that Ram was suspected. Whatever, therefore, may be my suspicions, there is evidence only to the extent of the confession, *viz.*, of the prisoner's privy to the crime; but the crime is so heinous

and as it was committed on premises which were under the care of the prisoner, I do not think that the punishment which I can impose is sufficient for it, and I propose that he be imprisoned with fourteen (14) years' imprisonment, with labor.

"Obhoy Baugh, (No. 2,) deposed before the police on the 29th of June, that as he was engaged by himself, he observed Ram Malee strike down Huro by a blow on the neck with a *dão*, and that he spoke to him afterwards as he was digging over the ground where the blood had fallen, and that when they afterwards sat down together, in the *palee's* house, he was asked by the malee to dispose of a *poincha*, and he pawned it for three rupees, one of which he kept for himself. On the 30th of June, he deposed to the same effect before the magistrate, but there is a difference in the depositions which would not occur in a true statement: He said before the magistrate that he was asked to pawn the *poincha* by Ram, who followed him for the purpose. In addition to this a *poincha*, which is valued at rupees 4-9-6, which belonged to Huro, is shown to have been pawned by him for three rupees. I therefore find him guilty of being accessory after the fact to the murder of Huro Kyburteenee for the sake of her ornaments, and propose that he be imprisoned in banishment for life."

Remarks by the Nizamut Adawlut.—(Present: Mr. R. H. Mytton).—"The proof adduced against the prisoners in this case consists of,—*First*, the evidence of two witnesses, who were in the employ of the prosecutor, to the fact of the prisoner, Ram Malee, having enticed the deceased to accompany him to the garden in which he worked, on pretence of giving her some cocoa-nut plants and *jkinga*.

"*Secondly*.—Evidence to the finding of the body in a ditch adjoining the garden in which Ram Malee worked, and of there being marks of blood on a spot within the garden, from which the body appeared to have been dragged.

"*Thirdly*.—The confession of prisoner Ram Malee to seeing prisoner Obhoy drag the body away after the murder, and that of Obhoy to seeing Ram Malee strike the fatal blow, and subsequently receiving from him a *poincha* to pawn, which he did, and shared in the proceeds.

"As observed by the additional judge, if the evidence to enticement were credible, the prisoner Ram Malee might be convicted as a principal on it and the marks of blood in his garden; but I concur with him that it is not so. The family of the deceased did not act in any way as if they had been informed that Ram Malee had called away the deceased, although the prosecutor deposes that his first notice from Poorsuttum of his mother's disappearance was coupled with the name of Ram Malee; but it is not Poorsuttum who pretends to have been the

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informant, it is Huro. If either of them had given such intelligence as they allege, Ram Malee would have been sought for at once, whereas he was not thought of till the body was found.

"The confessions must, therefore, be accepted as the only proof against the prisoners: that of Ram Malee amounts to an admission of privity to wilful murder for the sake of ornaments; that of Obhoy Baugh also to privity, and to having had in his possession and pawned a part of the stolen property. Of these offences they are convicted and sentenced each to fourteen (14) years' imprisonment, with labor in irons.

"I observe that on the second day after the police had commenced inquiry, and before two persons named as accomplices by Obhoy Baugh had been examined, or any search for the remainder of the stolen property had been made, the magistrate unaccountably stopped the inquiry. This is to be regretted. Had further search and inquiry been made it is possible that a more satisfactory result would have been arrived at."

PRESENT:

R. H. MYTTON, Esq., *Officiating Judge.*

LUKHUN DOSS BOYSTUM

versus

NARAIN LOHAR.

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Case of
NARAIN LOHAR.

Crime, knowingly receiving plundered property; sentence six years' imprisonment, confirmed.

CRIME CHARGED.—1st count, dacoity on the night of the 10th March 1852, corresponding with the 28th Phagoon 1258, in the house of the prosecutor and plundering therefrom property to the value of rupees 142; 2nd count, knowingly receiving property obtained by the said dacoity; 3rd count, belonging to a gang of dacoits.

CRIME ESTABLISHED.—Knowingly receiving property obtained by the said dacoity.

Committing Officer, Baboo Jogesh Chunder Ghose, deputy magistrate of Gurbettah, zillah West Burdwan.

Tried before Mr. Pierce Taylor, sessions judge of West Burdwan, on the 24th June 1852.

Remarks by the sessions judge.—"There was nothing to show distinctly that this was a professional dacoity. All the *mudoors* and other low caste people in the vicinity of Bishenpore appear to take to this crime when their means of livelihood become straitened and the cowardice and apathy of the inhabitants of the *ilaqueh* keep the habit alive. None of the robbers who had lighted *mussals* with them were recognised at the time and no violence appears to have been committed. The thanna was quite close to the prosecutor's house, but the chowkeedar

Lukhun, (witness No. 3,) was very backward in giving notice, though he acknowledged that he actually saw the dacoits in the act. He, moreover, stated that he had seen suspicious persons assembled near the house of a woman named Pootee Majheenee, some days before the occurrence, without informing the darogah.

"The darogah was away on leave, but the mohurir and jemadar displayed very considerable activity and commenced searching for the robbers in different directions without delay. The first persons seized by the mohurir were two men named Narain Singh and Ramdhun Manjheg, who were found in the house of Pootee, above-mentioned, which was near that of the prosecutor.

"The woman affirmed that they had nothing to do with the dacoity, and that if they were released she would point out the actual perpetrators thereof.

"The two persons mentioned were sent to the thanna and the woman proceeded with the mohurir to a village close by, named Gosainbaree, where the prisoner Narain Lohar, (No. 9,) was found standing behind his house ready for a start. As soon as he heard certain questions addressed to the women of the house by the police, he threw away a *tuslah* and a *kutora* which he had in his hands and took to flight, but was immediately made prisoner. Besides the above utensils, a quantity of *bel malas*, or necklaces, in which prosecutor dealt, were found near the house next day, and all were recognised by the prosecutor and his witnesses. While the woman Pootee was on her way to Narain's house, she told the mohurir that some of the dacoits were inhabitants of Jadub Nagur, a village about one and a half coss from prosecutor's house, and that some persons had better be sent in that direction. Upon this the mohurir deputed a chowkeedar, named Nuffer Mirdha, to direct the jemadar to do the needful. As soon as that officer received notice he started off with the chowkeedars who had been assisting him, *viz.*, witnesses Nos. 14, 15, 16, 17, 21 and 22, and on approaching Jadub Nagur saw, by the light of the moon, some persons with bundles moving on the other side of an intervening *khal* or nullah. These on being pursued called out that people were coming to apprehend them, and flinging away certain brass vessels, &c. made off towards the village. The police followed and declared that they never lost sight of the fugitives until they simultaneously entered the house of Udoito, (prisoner No. 10,) from which they were immediately extracted, together with a bundle of *lattees*, a *tanghee* and a *koolaree*.

"The *sooruthal*, the apprehension of the prisoners, the confession of Narain Lohar, (No. 9,) in the Mofussil and before the deputy magistrate, the throwing away and finding of the property and its recognition were duly proven by the evidence of the witnesses named under those heads in the calendar.

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"The direct evidence against the prisoner No. 9, Narain Lohar, was:—

First,—"His own confession in the Mofussil and before the deputy magistrate, in which he acknowledged that the *tuslah* and *kutora* had been given to him by his brother Sreedhur Lohar on the night of the dacoity, just before the police came up, and that he knew them to be property obtained by dacoity.

Secondly,—"The evidence of witnesses Nos. 1, 6, 13 and 20, who apprehended him after he had thrown away the utensils in question which were picked up after his seizure.

Thirdly,—"The evidence of the prosecutor and witnesses who swore to the property in question.

"The direct evidence against the other five prisoners was:—

First,—"That of the jemadar and chowkeedars who saw the property subsequently sworn to by the plaintiff and his witnesses, thrown away by *five persons* near Jadub Nagur, and who pretended that they pursued the said *five persons* into the house of the prisoner No. 10, from which *five persons*, who proved to be the said prisoner and prisoners Nos. 11, 12, 13 and 14, were immediately extracted.

Secondly,—"The evidence of the prosecutor and witnesses who recognised the aforesaid property.

"The prisoner No. 9, Narain Lohar, at the thanna and before the deputy magistrate, named various persons, including Ramdhun and Narain Singh, who had been seized at the house of Pootee Majheenee, as participators in the dacoity enumerated to him by his brother Sreedhur, but he omitted them all in his answer given before me, saying that he had mentioned them in the Mofussil because he was forced to do so by the darogah and before the deputy magistrate, because he was not in his right mind in consequence of the violent treatment which he had received at the thanna, yet he repeated that Sreedhur had given the *tuslah* and *kutora* on the night of the dacoity, but without saying that they had been obtained by the commission of that crime. He named three witnesses to character who deposed accordingly.

"The other five prisoners declared that they had not committed the dacoity and had merely been sleeping as usual in the house out of which they were taken.

"They also named witnesses to character, whose evidence was of no weight, as they were chiefly relations of the prisoners, who are also nearly related to each other.

"On careful perusal of all the evidence in this case, I considered that against the prisoner No. 9, Narain Lohar, to amount to sufficient legal proof of the crime charged in the second count, and therefore sentenced him as noted.

"Not considering the evidence of the police officers against

the prisoners Nos. 10, 11, 12, 13 and 14 conclusive as to their being the very persons who threw away the property of the prosecutor near Jadub Nagur, I directed their immediate release as mentioned in the Abstract Statement of Prisoners Acquitted.

"There were various points which required remark in this case as follows :

First,—"The crime of privity to the dacoity was sufficiently proven against the woman Pootee Majheenee for her conviction by her own confession and the mere fact of her having been able to point out the habitation and path of the perpetrators of the crime to the police immediately, yet the deputy magistrate released her.

Secondly,—"Sreedhur, the brother of Narain, voluntarily gave himself up to the darogah the day after the dacoity and confessed participation in the crime, naming most of the persons enumerated in his brother's confession, and stating that he did give the *tuslah* and *kutora* to the latter as affirmed by him. Though he denied his presence in the dacoity before the deputy magistrate, he repeated the story of the transfer of the *tuslah* and *kutora* with a difference, saying that he had found the articles and gave them to Narain to keep till next day, when he expected to be remunerated by the person who had lost them. Mussts. Pearee and Bhoyrubee, the mother and sister-in-law of the said Sreedhur and Narain, when examined at the thanna, distinctly deposed to the complicity of the former in the dacoity, and the transfer of the *tuslah* and *kutora* in the manner originally acknowledged by Narain Lohar on the very night of its occurrence. Both women gave different depositions before the deputy magistrate, but that of Musst. Pearee still retained the account of the transfer of the brass utensils on the night of the dacoity. All this, confirmed by the confession of Narain Lohar and supported by the actual recovery of the *tuslah* and *kutora* and the *malas*, which were also mentioned in the woman's deposition as thrown away by Sreedhur himself, surely amounted to violent suspicion against Sreedhur, sufficient for his conviction also, yet the deputy magistrate released him.

Thirdly,—"A woman named Umbika Lohareenee deposed before the deputy magistrate, that she saw the prisoners Nos. 10, 11, 12, 13 and 14 rush into the house of No. 10, and heard them say that they were all but caught, when the police *shortly afterwards* followed and made them prisoners. This woman ought to have been sent in with other witnesses, and why she was not is problematical.

"I directed the attention of the deputy magistrate to all these points and requested him to explain why he had not committed Pootee Magheenee and Sreedhur under the circumstances above detailed, and why he had not sent in the woman Umbika as he ought to have done.

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"I also directed his attention to the fact that no proper notice had been taken of the chowkeedar Lukhun's neglect, and pointed out to him that he ought to send in all the witnesses to confessions and be careful to ascertain their actual residences in future."

Sentence passed by the lower court.—Four (4) years' imprisonment, with labor in irons, and two (2) years more in lieu of corporal punishment, also with labor in irons, altogether six (6) years, with labor in irons.

Remarks by the Nizamut Adawlut.—(Present: Mr. R. H. Mytton).—"No sufficient reason supported by the record is adduced in appeal to justify interference with the conviction of, and sentence upon, the prisoner."

PRESENT:

R. H. MYTTON, Esq., *Officiating Judge.*

DINNONATH PAL

versus

RAMCHAND BAGDEE (No. 1), KISTOO MANJEE (No. 2), MOHESCHUNDER BIUR (No. 3), SHIBOO LUSKER (No. 4), RAM TEEORE (No. 5) AND BHUGWAN BHUR (No. 6).

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Sentence of ten years' and seven years' imprisonment for river dacoity, confirmed.

The evidence of an approver corroborated by circumstantial evidence and confessions of other accomplices admitted to be sufficient for conviction.

CRIME CHARGED.—1st count, dacoity on the river and plunder of rupees 2,524 in silver and copper coins belonging to the prosecutor's employer Ramchander Pramanik; 2nd count, accomplices in the above crime; 3rd count, Nos. 1, 2, 3 and 5, with receiving a portion of the above sum, knowing it to have been so plundered.

CRIME ESTABLISHED.—Accomplices in dacoity on the river. Committing Officer, Mr. E. A. Samuells, magistrate of the 24-Pergunnahs.

Tried before Mr. W. J. H. Money, sessions judge of the 24-Pergunnahs, on the 4th June 1852.

Remarks by the sessions judge.—"The prosecutor, who is a gomashtha of a mahajun at Chagda, deposed that on the 25th Poos last, early in the morning, he was despatched to Calcutta by his master in charge of rupees 2,484 in cash, and rupees 40 in copper, in a boat of which prisoner No. 6, Bhugwan Bhur, was manjee; that the boat was detained by this manjee at Boyd-battee, and subsequently, on their arriving to the south of Ballee Khal, another boat, containing about eight persons, approached them asking for fire; that two of these men boarded the boat where the prosecutor was, one of them seizing him by the neck and pressing his head down, another removing the two bags of rupees and two bags of copper from the boat. Nothing further appears to have been heard of this attack, until the police were

making inquiries in another dacoity case subsequently, when Juggernaut Hajra, witness No. 1, (who has been admitted as an approver) was apprehended: he denied all knowledge of the case for which he was actually under custody, but admitted the previous river dacoity which led to the apprehension of the other prisoners. The prisoners denied in this court the charges on which they were arraigned. In the Mofussil all the prisoners admitted their being accomplices in the dacoity and receiving a portion of the plundered property. Before the magistrate the admission of prisoner No. 1, Ramchand Bagdee, was to the same purport; the other prisoners denied the charge. Witness No. 1, Juggernaut Hajra, deposed to the conference held by the prisoner, previous to the dacoity, to the detention of the boat at Boydbattee and to the subsequent attack by the prisoners near Ballee Khal, and the division of the spoil near Seebpore. Witness No. 2, Purwez Khan, burkundauz, witness No. 3, Muthoorchand Dandy and witness No. 4, Ramnarain Dandy, deposed to their being in a guard boat on the river at that time and seeing a small boat going closely followed by another and to their hearing from the persons in the last boat what had occurred.

"Witnesses deposed to the production of money, said to have been part of the plundered property in the possession of prisoners Ramchand Bagdee, (No. 1,) Kistoo Manjee, (No. 2,) Moheschunder Bhur, (No. 3,) and Ram Teeore, (No. 5.)

"Prisoner No. 1, Ramchand Bagdee, complained of ill-treatment; declared he had a quarrel with the witness No. 1, Juggernaut Hajra, and cited witnesses to prove his good character. Prisoner No. 2, Kistoo Manjee, accused the darogah of receiving money and cited witnesses to prove his sickness and an *alibi*. Prisoner No. 3, Moheschunder Bhur, accused the darogah of ill-treating him and cited witnesses to prove his being possessed of money from a relation. Prisoner No. 4, Shiboo Lusker, complained of ill-treatment, and cited witnesses to prove his quarrel with Juggernaut Hajra. Prisoner No. 5, Ram Teeore, complained to the same purport and cited witnesses to prove his good character. Nothing, however, was elicited calculated to impugn the evidence for the prosecution. I considered all the prisoners guilty of being accomplices in river dacoity and sentenced them to imprisonment, awarding a higher degree of punishment to Moheschunder Bhur, (No. 3,) Shiboo Lusker, (No. 4,) and Bhugwan Bhur (No. 6,) as being more actively concerned."

Sentence passed by the lower court.—Nos. 3, 4 and 6 to be imprisoned each for the period of ten (10) years, and Nos. 1, 2 and 5 each for the term of seven (7) years, all with labor and irons.

Remarks by the Nizamut Adawlut.—(Present: Mr. R. II. Mytton).—"The prisoners who have appealed in this case have put in a mookhtarname appointing Gholam Gono and

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Zaheerooddeen their mookhtars, but on two successive Saturdays (which is the usual day of the week for disposal of criminal cases, in which council for the accused are nominated,) they have neglected to attend, and have put in no paper of pleas, I therefore deem it unnecessary to postpone the case any longer.

"The manner in which a clue to the discovery of the perpetrators of this robbery was obtained precludes suspicion. Two darogahs of other thannas, inquiring into a subsequent dacoity, were informed of the occurrence of this by the admission of one of the accomplices, who named all the gang concerned in it, and produced the remaining part of his own share of booty, viz., rupees 132, a large sum for a man in his situation to come by honestly. All the actual perpetrators of the dacoity who were apprehended, confessed their guilt, and all but Shiboo gave up portions of the booty. The proof against them is conclusive and full. The proof against Bhugwan, the manjee of the boat, in which the robbery took place, is not so full. He has denied his guilt throughout, and none of the booty has been found in his possession. However what proof there is, is of a very satisfactory nature. The informer mentioned him by name to the darogahs in the first instance as the *guttuch* or procurer of the robbery, and mentioned that he was present at the meeting at Gonesh Rar's, at which the plan was settled, that he came to at the ghat where the dacoits were *layaod* at Boydbattee, and went ashore, followed by Mohes and Kishen, prisoners, to complete the scheme. This account he has repeated on solemn affirmation, with more circumstantiality on the trial. The evidence of the prosecutor corroborates it as far as he is concerned. He states that he was surprised at the length of time Bhugwan remained ashore at Boydbattee on pretence of getting victuals. The confessions of the other prisoners also corroborate the account of the informer. All the prisoners have, therefore, in my opinion, been properly convicted, and I see no reason to interfere with the sentences passed."

PRESENT:

W. B. JACKSON, Esq., *Judge*.

MUSST. BHOOSEA GWALIN

versus

IN TRIAL NO. 4.—HEMUN DOSADH (No. 3) AND ACHURUJ SINGH RAJPOOT (No. 4).

IN TRIAL NO. 7.—BOODHOO, ALIAS BOODHUA (No. 11).

CRIME CHARGED.—1st count, wilful murder of Bhoolee Gwala; 2nd count, maltreating and beating the deceased which caused his death.

Committing Officer, Mr. F. C. Fowle, magistrate of Behar.

Tried before Mr. T. Sandys, sessions judge of Behar, respectively on the 18th and 28th of June 1852.

Remarks by the sessions judge.—IN TRIAL NO. 4.—“ On the afternoon of the 1st of April last, Hemun Dosadh, (prisoner No. 3,) gorahit of Sarpore, was plundering the prosecutrix, a resident of the same village, of some cow-dung fuel for the use of the village authorities, during which he struck her, as also Bhookhun, (witness No. 1,) her brother-in-law, who was the first to come to her assistance. Both had marks of blows on their persons, on their appearance at the thanna the same day. Bhoolee Gwala, the prosecutrix's husband, arrived shortly afterwards, and Hemun had gone off to complain to the village authorities then present at the threshing-floors, of which there were two outside the village and returning with Achurnj, (prisoner No. 4,) and several other retainers (absconded); they bound the deceased's and Bhookhun's hands behind their backs, and maltreating them were carrying them off captives. The facts thus far stand essentially acknowledged on both sides, but there are two versions of what followed—one that the prisoners and others were taking their two captives off to Bechee, about a mile distant, where Sheolal Singh, the lease-holder, resided, which so terrified the deceased that he killed himself by throwing himself down the village well. The other that on approaching the well, they found Byjuath, the lease-holder's nephew, there, who striking the deceased a blow on the head with a heavy stick killed him on the spot, and then, to conceal the crime, caused the body to be thrown into the well.

“ The first version has been maintained by the witnesses Choolhun (No. 3) and Ajeet (No. 5,) and the last by the prosecutrix and witness No. 1, and also, accompanied with wilful gross contradiction, by Chintamun, (witness No. 2,) the deceased's brother-in-law. Gungeea Kuharin, (witness No. 4.)

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imprisonment
with labor
and irons,
passed upon
the prisoners
convicted of
accomplice-
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and Sibun Kahar, (witness No. 6,) depose as eye-witnesses in support of the first version up to the occurrence at the well and to hearsay of the deceased's having thrown himself into the well, and Munnee Singh, (witness No. 11,) Gujadhur (witness No. 12,) and Sobhie Singh, (witness No. 13,) residents of the same village, to their having taken the corpse out of the well with the arms pinioned, to their finding Bhookhun (witness No. 1) there bound in a similar manner and to their loosening his bonds, who, as well as the prosecutrix, then and there told them that the deceased had thrown himself into the well.

"The police inquest and Dr. Diaper's *post mortem* examination prove that the deceased has not only been brutally maltreated, but that also the injuries to the skull must have been the cause of death. Dr. Diaper deposes, 'external appearances, 'hands securely and very tightly tied behind the back, and 'which must have been done during life. Marks of severe 'beating over the body generally, but more particularly over the 'left shoulder, and the upper part of the left side of the head 'where there was a contused wound of about two inches long. 'On dissecting the scapal, there was considerable discoloration 'of the skull, corresponding with the external wound, and considerable effusion of coagulated blood was found between the 'skull and brain in the same situation, and which, with the 'general suffused state of this organ, evidently caused by violence, 'must have been the cause of death.'

"The prisoners, who delivered themselves up on the day of the occurrence, both before the police and magistrate, adopted the first version, and their defence before this court is to the same purport, although qualified to the extent of throwing the blame of the maltreatment of the deceased on their fellow retainers who have absconded. They called witnesses, who either know nothing in their favor, or else from mere hearsay only of the deceased's death by throwing himself into the well. All the other persons accused, including Byjnath Singh and excepting one Boodhoo, subsequently brought to trial, have eluded apprehension.

"The *futwa* of the law officer, with reference to the contradictory testimony forthcoming, and considering the cause of death doubtful, acquits the prisoners of wilful murder, but convicts them of the tyrannical and oppressive maltreatment of the deceased, and declares them liable to discretionary punishment by *akoobut*.

"The mass of hearsay or exculpatory evidence forthcoming in a case like this in which the oppressed is a low caste gwalla, or *serf*, and the oppressors his master and retainers, as to the deceased's having come to his death by throwing himself down

the well need occasion no surprise, and carries no weight in my mind, but the very contrary when found irreconcilable with attendant circumstances, as I, in like manner, view the numerous symptoms of tampering with the prosecution, so as to mitigate the atrocity of the occurrence, and of which the prosecutrix's testimony is itself illustrative. Her depositions both before the police and the magistrate in the first instance attribute her husband's death to severe maltreatment only, which she specifically stated as being caused by kicks, cuffs and blows alone, and it was not until questioned by the magistrate that she accused Byjnath Singh of having struck the deceased on the head with a heavy stick. It is vain to look for better evidence in such a case. The prosecutrix named other witnesses before the police, Oojai Gwala, Hensraj Gwala and Keydun Gwala, who there deposed on hearsay to the same set tale of the deceased's having thrown himself into the well, and even including Byjnath's absence from the village, as acknowledged by the prosecutrix herself before this court when she remarked 'what was to be expected from *serfs* against their masters and that she could not call any other witnesses.' The village has been for many years past in the hands of Byjnath's family, and both himself and his uncle Sheolal Singh are notorious violent and influential resident lease-holders and land-holders in the neighbourhood. When the occurrence under trial took place, Byjnath was a fugitive, said to have been actively concerned in a case of affray or riot attended with severe wounding, which took place in November last, and for which his uncle Sheolal Singh now stands under sentence, as reported to the court, under my letter No. 105, dated 9th ultimo.

"To the best of my judgment the testimony of the witnesses Choolhun (No. 3) and Ajeet (No. 5), is altogether false. Both have palpably contradicted themselves on material points. Choolhun under examination before the magistrate and this court, as to the opportunity obtained by the deceased to throw himself into the well, and Ajeet who deposed before the police, in unmistakable particulars, as to his having gone home before the occurrence at the well took place, and to his only having heard of it, though he knew not how it had happened, both before the magistrate and this court, deposes to his having witnessed it! Had their story been a true one, it could not have been so utterly wanting in probability or a single corroborating circumstance. The well, the only one of the kind in the village, was a large pukka one, raised above the ground, and with a good depth of water, according to the map No. 22 three fathoms. A portion of its eastern wall within the water level had given way, but it was in good order in every

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other respect. It is in the first place incomprehensible how a captive with his hands pinioned behind him, like the deceased, surrounded by so many capturers, could have committed such an act. Choolhun describes the deceased as deliberately mounting the well by its steps, and Ajeet, who says he was only five *baus* behind the deceased at the time, excused himself for not having prevented him as the deceased's capturers were between him and the deceased. But even supposing that the deceased had reached the top of the well of his own accord, his fall into it will not account for the state of the mortal blow found on his person as verified by the *post mortem* examination. Choolhun and Ajeet deposed that he jumped into the well feet foremost, Choolhun that he did so from the eastern side and Ajeet from the western. The probabilities seem to amount to a certainty that thus throwing himself into so large a well, feet foremost, he would have reached the water without his head having come in contact with its sides, but even if it had, the *post mortem* examination proves that the position and nature of the blows on the head and shoulder do not admit of their having been inflicted by contact either with the entire or broken portion of the wall, without regard too, to the contradictory evidence as to his having fallen from the eastward or westward, whilst the broken portion was only to the eastward. Dr. Diaper is of opinion 'that these 'external marks of violence might have been caused by falling 'down a well, but, from the very severe internal injuries displayed 'in the brain, and which could not have been caused by falling 'down a well, from their situation, *viz.*, on the *side* of the head, 'he is of opinion that the cause of death, namely, rupture of the 'cerebral blood-vessels resulted from a severe blow inflicted by 'some offensive weapon.' There was another severe blow also on the left shoulder, but Dr. Diaper considers 'the wound on 'the left side of the head and that on the left shoulder to have 'resulted from two distinct acts of violence,' whereas these wounds, from their proximity, if occasioned by a fall, could not have failed to have been visibly connected as originating in only one possible effect, from one and the same cause. Rejecting, therefore, the testimony of these two witnesses as regards the deceased having come by his death in the manner stated by them, I revert to those of the prosecutrix, and witness No. 1, and Chintamun, (witness No. 2,) whose testimony appears to me more natural and consistent in all its bearings, as substantially explaining much that has been acknowledged and equally in accordance with all that followed. If any exception is to be taken to their evidence it cannot at least be attributed to the common habit of exaggeration, but the very reverse, as both prosecutrix and Chintamun have shown much disposition to suppress matters, as if

tampered with to give faulty evidence in detail and so break down the prosecution in an indirect manner, when their questionable consciences would not admit of their doing so directly. Nothing can be more illustrative of this than Chintamun's gross contradiction, to which I feel at loss to assign any other motive. He was the original informant at the thanna, and though deposing generally in support of the prosecutrix and Bhookhun's testimony, he introduced one wilful contradiction into his deposition both before the magistrate and this court when he stated that Byjuath's deadly assault on the deceased took place in one of the two threshing-floors, either of which was at a considerable distance from the village, whereas in his information at the thanna he distinctly stated the *peepul* tree (not entered in the police map, No. 22, these maps being usually very carelessly drawn up,) which under examination before this court has been satisfactorily established as the place of occurrence deposed to by the prosecutrix and Bhookhun, (witness No. 1,) as close to the well and village and as corroborated by the testimony of the witnesses Munnee, (No. 11,) and Sobhie, (No. 13,) whose leaning is manifestly more in favor of the defence than the prosecution. Thus viewing the case, I can arrive at no other judgment than that the *deceased brutally came* by his death in the manner deposed to by the witness Bhookhun, (No. 1,) the prosecutrix, and Chintamun, (witness No. 2,) and though the testimony of the two latter is as shown of a questionable character, yet regarding it in the main as circumstantially corroborated, I can convict the prisoners on strong presumption of nothing short of being accomplices in the wilful murder of the deceased, a crime in a lower degree than that they have pleaded to, and which their own tyrannical and oppressive conduct, aided, as best bespoken by the indisputable fact of the body having been taken out of the well with its arms pinioned, and for which the countenance of their employer cannot in the least hold them excused, but rather aggravates it when happening in their presence on an unfortunate, and in reality, unoffending victim, rendered defenceless by their own wanton pinioning. I would sentence each of the prisoners to fourteen (14) years' imprisonment, in labor and irons, in banishment."

Remarks by the sessions judge.—IN TRIAL NO. 7.—"This is a supplementary trial in sequence to that of same prosecutrix *versus* Hemun Dosadh and Achuruj Singh, reported to the court in my letter No. 139, dated 6th instant, and the circumstances attending which are thus given in its second and third paragraphs. Para. 2nd.—'On the afternoon of the 1st of April 'last, Hemun Dosadh, (prisoner No. 3,) gorahit of Sarpore, was 'plundering the prosecutrix, a resident of the same village, of

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' some cow-dung fuel for the use of the village authorities, during which he struck her, as also Bhookhun, (witness No. 1,) her brother-in-law, who was the first to come to her assistance. Both had marks of blows on their persons, on their appearance at the thanna the same day. Bhoolee Gwala, the prosecutrix's husband, arrived shortly afterwards, and Hemun had gone off to complain to the village authorities then present at the threshing-floors of which there were two outside the village, and returning with Achuruj, (prisoner No. 4,) and several other retainers (absconded), they bound the deceased's and Bhookhun's hands behind their backs, and maltreating them, were carrying them off captives. The facts thus far stand essentially acknowledged on both sides, but there are two versions of what followed—one that the prisoners and others were taking their two captives off to Bechee, about a mile distant, where Sheolal Singh, the lease-holder, resided, which so terrified the deceased that he killed himself by throwing himself down the village well. The other that, on approaching the well, they found Byjnath, the lease-holder's nephew, there, who striking the deceased a blow on the head with a heavy stick, killed him on the spot, and then, to conceal the crime, caused the body to be thrown into the well.'

' 3rd.—The first version has been maintained by the witnesses Choolhun (No. 3,) and Ajeet, (No. 5), and the last by the prosecutrix and Bhookhun, (witness No. 1,) and also, but accompanied with wilful contradiction, by Chintaman, (witness No. 2), the deceased's brother-in-law. Gungea Kuhari, (witness No. 4,) and Seebun Kuhar, (witness No. 6,) depose as eye-witnesses in support of the first version up to the occurrence at the well, and to hearsay of the deceased's having thrown himself into the well, and Munnee Singh, (witness No. 11), Gujadhur Singh, (witness No. 12,) and Sobhie Singh, (witness No. 13,) residents of the same village, to their having taken the corpse out of the well with the arms pinioned, to their finding Bhookhun (witness No. 1) there bound in a similar manner and to their loosening his bonds, who, as well as the prosecutrix, then and there told them that the deceased had thrown himself into the well.'

" The prisoner, who is a retainer of the lease-holder, Sheolal Singh, referred to in the original trial, pleads 'not guilty,' and sets up an *alibi*, in support of which he calls several witnesses, fellow retainers or dependants of the same employer, who testify accordingly.

" The *futwa* of the law officer acquits the prisoner on the strength of such *alibi*, and the evidence of fellow retainers or dependants being more deserving of credit than that of the near

relationship of the witnesses for the prosecution, on the strength of which, however, let it be added, he convicted the two prisoners Hemun and Achuruj on the original trial.

“For the reasons already assigned in the original trial, I can discover no new grounds why the like reasons should not guide my judgment as regards the prisoner under trial. Every reason given is equally applicable to himself, and the stronger too, as he has been consistently named throughout by all the conflicting evidence of the case, as active in the outrage occasioning the deceased's death, and in such character he has been even named by his fellow retainers, the original prisoners Hemun and Achuruj. It is impossible for me, therefore, to assign to him any other than a similar sentence, as an accomplice in the wilful murder of the deceased, and accordingly to recommend his being subjected to the same punishment, *viz.*, fourteen (14) years' imprisonment, in labor and irons in banishment.”

Remarks by the Nizamut Adawlut.—(Present: Mr. W. B. Jackson.)—“I take up this case of Boodhoo with that of Achurnj and Hemun; they are all charged with the same act of taking a part in the murder of Bhoolee. It is proved that the prosecutrix, wife of deceased, was going home with a basket of dry cow-dung used as fuel; that Hemun forcibly seized the basket and took it from her, and on her objecting that this was highway-robbery, Hemun struck her over the eye with a (*lohbanda*) club shod with iron. On hearing the noise her brother-in-law Bhookhun came and interfered, and her husband Bhoolee afterwards joined them. Hemun then went and brought several others with him from the threshing-floor, among these were the prisoners Boodhoo and Achuruj; these three with others tied the hands of Bhoolee and Bhookhun behind their backs and took them to the khulean; there the prosecutor says that another blow was given by Bechun or Byjnath (the names are both used) which killed Bhoolee at once; and that the prisoners and their party then threw the body into a well. Two witnesses, Choolhun and Chintamun, say that Bhoolee fell into the well of his own accord; but this is shown by the evidence of the medical man to be false; for the injuries to the body are stated to be severe, and the wound on the head penetrated to the skull; a quantity of blood was found lying on the brain and under the skull, and the arms had been pinioned in a most severe and painful manner; it was impossible that the deceased should have gone and thrown himself into the well after receiving this injury, even if there was any reason for thinking it probable he should do so; but there was none; and I have no doubt that he was thrown into the well after he was killed. This is stated to be the fact by his brother Bhookhun, who was found standing by the well, with his

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arms tied behind him when his brother's body was taken out of it; the arms of the body were still tied when taken out of the well; the commencement of the affair was by oppression and robbery and violence, and the three prisoners are proved to have taken an active part in it; and as the result of the violence was the death of the deceased Bhoolee, I convict the prisoners Hemmun, Achuruj and Boodhoo, as accomplices in the murder laid to their charge, and sentence them to fourteen (14) years' imprisonment, with labor and irons."

PRESENT:

W. B. JACKSON, Esq., Judge.

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The prisoner who pleaded the existence of adulterous intercourse between his wife and the deceased, his brother, although convicted of murder, was, under the extenuating circumstances, only sentenced to transportation for life.

CRIME CHARGED.—Wilful murder of Nukeemuddin.

Committing Officer, Mr. H. S. Porter, deputy magistrate of Noacolly, zillah Tipperah.

Tried before Mr. H. C. Metcalfe, sessions judge of Tipperah, on the 26th July 1852.

Remarks by the sessions judge.—“This case is a peculiarly painful one, arising from the circumstances that the murderer and his victim were brothers, while the age of the former is but twenty-two years, that of the latter being at the time of his death but eighteen.

“The prisoner appears to have entertained a belief that his brother and wife maintained an illicit connexion. Whether their conduct amounted to actual adultery, or was limited to a degree of levity which justified the husband's suspicions without establishing their correctness, is not satisfactorily shown. The wife seems also to have been a very young person, her age being probably fourteen years, and scarcely likely to have been guilty of criminal conduct with so near a connexion, but it is evident that her lightness of manner towards his brother had been the subject of frequent remonstrance with her on the part of her husband and of dispute between the two brothers. The three were living with relatives, who might and ought to have interfered to check the degree of improper intimacy arising between the wife and brother-in-law. But they appear to have avoided all interference, and thus, in my opinion, to have led in a great degree to the result that ensued.

“The prisoner, finding remonstrance fruitless, seems to have become irritated towards his brother to an extent which banished all natural affection from his breast. His proceedings assumed

the shape of premeditated revenge, and the course he adopted was certainly one which justifies his committal for deliberate murder.

"He borrowed, towards the close of the 12th day of March, a sharp and heavy *ddo*, or bill-hook, from the wife of the witness No. 8, a relation residing in the same house, on the pretence of requiring it to cut canes. This he conveyed to a temporary sleeping place on the edge of a cucumber field, which it was usual to watch at night, concealing it under the bedding spread beneath the mat roof. When night arrived he proposed to his brother to accompany him to keep guard over the field, and the deceased proving unwilling to go, he resorted to earnest persuasion to induce him to do so.

"I may here remark that this determination that his brother should, whether willing or otherwise, accompany him, would have been quite natural by itself, and quite compatible with a supposition that what afterwards occurred arose from a sudden impulse of passion, as stated in his defence before this court, had it not been for the previous preparation and concealment of the bill-hook. For if the prisoner believed that his wife and brother carried on a guilty intimacy, it was reasonable he should be averse to leaving the latter in the house with her while sleeping out of it himself. But the conclusion is, I fear, under the circumstances, unavoidable, that the prisoner's purpose in pressing his brother to accompany him was to complete the act, the preliminaries to which had already been systematically arranged.

"He appears to have waited deliberately until his brother slept and then to have all but cut his head off with the bill-hook, the member remaining but slightly attached to the body by a ligament of flesh and skin. He now buried the bill-hook, and having done so, the cruelty of the act he had perpetrated seems to have flashed across his mind, and instead of persevering in any plan of concealment, for of such hiding the bill-hook seems to have been a commencement, he hurried to the dwelling-house, exclaiming aloud and repeatedly 'oh! I have cut my brother's throat, I have cut my brother's throat.' The inmates hastened with a light to the spot, and found the body of the younger brother almost decapitated, and the bedding and pillows on which he had been sleeping saturated with blood.

"It is necessary, after mentioning these particulars, to notice the sources from which they are obtained. The ill-feeling between the two brothers, or rather that entertained by the elder towards the younger, its cause, the borrowing the bill-hook, the persuasion necessary to induce the deceased to join the prisoner in his night-watch, the prisoner's return home alone exclaiming that he had killed his brother, the finding the mutilated body and recovery of the buried bill-hook, are points de-

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rived from the evidence of the witnesses Nos. 7, 8, 9, 10 and 11. The previous concealment of the bill-hook for its deadly purpose on the spot where the murder was committed, and the subsequent burying it in an adjoining field of chillie plants, are points mentioned by the prisoner in his ample confessions before the magistrate and at the thanna, which detail his jealousy of his brother, his determination to kill him, and the course he adopted to effect the purpose. These points it is needless to repeat.

"The prisoner pleaded 'not guilty'.

"The evidence in support of the prosecution consisted of five witnesses, to whom, and to the nature of whose evidence, I have already alluded. Three witnesses, Nos. 1, 2 and 3, describe the throat as cut completely through, and the head as attached to the body by a small portion of the skin only.

"The prisoner in his defence before me stated, that he had repeatedly forbidden his brother to indulge in such improper intimacy with his, the prisoner's, wife, but with no effect, and that on the night in question, he had again remonstrated with him, when his brother struck him, and, he having the bill-hook in his hand, killed his brother.

"The *futwa* of the Mahomedan law officer, declared the prisoner guilty of the wilful murder of Nukeemuddin, and liable to *seaut*. In this finding I concur.

"My previous remarks will have prepared the court for the expression of my opinion that the sole instigating cause in this case, the probable misconduct of the deceased with the prisoner's wife, is inadequate materially to soften the aggravated character of the prisoner's crime, arising from the premeditation evinced by him throughout. His arrangements were deliberately made and occupied a sufficient time for full reflection on what he was about to do, and if, as seems to have been the case, his sense of supposed injury was aggravated by the party inflicting it being his brother, such close relationship should also have suggested some bounds to his vengeance. With this view of the case, it is my painful duty to state that I conceive the prisoner has incurred the extreme penalty of the law and merits capital punishment. Should the court, however, consider his youth and the strong excitement he labored under, arising from an impression that his domestic happiness had been destroyed by his brother, circumstances sufficiently extenuating to admit of mercy being shown him, I shall rejoice that my view of the case is considered so far erroneous."

Remarks by the Nizamut Adawlut.—(Present: Mr. W. B. Jackson.)—"The prisoner Akramuddin is convicted of the murder of his brother Nukeemuddin with a *dāo*, when he was lying asleep, on his own confession throughout the case. The

prisoner says that his brother for two years had been in the habit of illicit connexion with the prisoner's wife; that he forbade him repeatedly but without effect, and that for this reason he killed him. The fact stated by the prisoner is corroborated by the evidence, and it seems that the prisoner immediately after the act, seemed greatly distressed in mind, and although no one was present at the time, immediately went and told the neighbours that he had killed his brother, and made no attempt to conceal the fact. I see no reason to doubt that the deceased was in the habit of criminal connexion with prisoner's wife for the last two years, notwithstanding repeated warnings. This does not justify the act of the prisoner; but in consideration of it, I am induced to withhold a capital sentence. The prisoner Akramuddin is hereby sentenced to transportation for life."

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PRESENT :

A. J. M. MILLS, Esq., *Officiating Judge.*

GOLAM HOSSEIN KHAN

versus

GERAYA (No. 1), BOODHOO (No. 2), RAM (No. 3), MORHA (No. 4), BISHNATH (No. 5) AND AYTA (No. 6).

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CRIME CHARGED.—Nos. 1, 2 and 3 highway-robbery and wilful murder of Elahee Bux Khan, cousin of the prosecutor; Nos. 4, 5 and 6 being privy to the above crime.

Committing Officer, Captain W. H. Oakes, principal assistant agent to the Governor General, Lohardugga, Hazareebaugh.

Tried before Major J. Hannington, deputy commissioner of Hazareebaugh, on the 23rd July 1852.

Remarks by the deputy commissioner.—“The prosecutor states that his cousin, Elahee Bux Khan, had for seven years past held the villages of Dhoroa Mochee and Khut Khora in farm. He resided in them and traded. In Jeyt last year, he visited his home,* and after his return to Dhoroa Mochee, he frequently wrote letters; but in Bysakh his communications ceased, and a person was sent to make inquiry about him without success. Prosecutor then came himself to Dhoroa Mochee and found his cousin's house quite empty. In answer to his inquiries, the *pahuns*† said only that his cousin had not come there. Prosecutor then went to Khut Khora, but found no trace of his cousin, and finally gave information to the assistant, who ordered the police to make inquiry, and the prisoners

Three of the prisoners, although convicted of murder, were not sentenced, under the circumstances of the case, to death, because the body of the deceased was not found, and there was not such cogent and irresistible proof of the truth of the confessions as would warrant the passing of an irrevocable sentence.

* At Aurungabad.

† Village priests.

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Geraya, Boodhoo and Ram being apprehended, confessed that five persons had murdered Elahee Bux, which confession they repeated before the assistant. Elahee Bux had possessed a horse, a sword, and some household utensils, and had papers representing dealings to the extent of rupees 4,000, besides cash and some cattle. Of this, excepting the sword and an old garment, nothing has been discovered. This sword and cloth (in court) prosecutor recognises. Prosecutor has resided in these parts, and went home six months before this event. Deceased generally dwelt at Dhoroa Mochee; he kept no domestic servants; the cattle-drivers (Moddee) used to prepare every thing, and he cooked his victuals himself. The cattle drivers were named Phekla and Oodai. They were always with deceased. Prosecutor did not meet them till they had been apprehended by the assistant. The bullocks were the property of the deceased, and were found with the prisoner Morha. He at first denied, but after the cattle were recognised he gave up eleven bullocks, two cows and a buffalo.

" The prisoners plead 'not guilty.'

" No. 1, witness Noor Alee, accompanied the police officer during the inquiry. At Khut Khora village the pahun was asked whether he had supplied a bhurria (porter) to Elahee Bux,—he said that he had. The bhurria was then called. He said that 'he had gone with Elahee Bux to Arahra village, where 'they stopped for the night. Two men came from Dhoroa 'Mochee with a letter for Elahee Bux. They stayed all night. 'Next morning the bhurria was discharged, the two men saying 'they would go with Elahee Bux, which they did.' The police officers took this bhurria and Morha, pahun of Arahra, with them to Dhoroa Mochee, where they assembled the villagers, and then Morha Pahun and Ayta and Bishnath. These three prisoners said they would produce the men who had murdered Elahee Bux. Accordingly, at about 9 p. m., they took witness with them to another hamlet (*tola*) in Dhoroa Mochee and apprehended the prisoners Geraya and Boodhoo. The prisoner Ram had concealed himself in a thicket and was apprehended by a baboo, whose name witness does not know. Ram confessed, saying that Geraya had first struck Elahee Bux two blows with a club. Boodhoo confessed, saying that when Elahee Bux fell from his horse, prisoner had struck him on the head with a club, so that he died, Ram and Phekla and Oodai being then present. Geraya also confessed that he had struck Elahee Bux two blows.

" No. 3	Witness	Jhundoo Singh,	} —These prove the confessions of the prisoners before the police officers.
" 4	"	Ooddoo,	
" 5	"	Champa,	
" 6	"	Doorjun,	

No. 7	„	Loothf Alee,	} —These prove the confessions of the prisoners before the principal assistant.	1852.
„ 8	„	Sheikh Boodhoo, ..		August 31.
„ 9	„	Sheikh Saheb Alee, ..		Case of
„ 11	„	Moheshnarain Tewary,		GERAYA and
„ 12	„	Burkhordar Alee, ..		others.
„ 13	„	Mahomed Zuma Khan,		

“The tenor of the confessions made before the police and before the principal assistant is briefly as follows:—

“Prisoner Geraya states that last year, in Bysakh, Morha, pahun, Kuba Mura, Mungrop Kootia, and Ayta and Bishnath gave a letter for Elahee Bux to prisoner and to Ram, and Boodhoo and Oodai and Phekla, desiring them to give the letter to Elahee Bux, then to kill him on the way and divide the property. Accordingly, the five last-named persons went for this purpose. Phekla and Oodai stopped at Kotbo village, in pergunnah Doesa. Prisoner and Boodhoo and Ram went to Khut Khora, and thence to Arahra in Bussia, where the five met again. Ram, Oodai and Phekla hid in a grove, and prisoner and Ram took the letter to Elahee Bux. He stopped during the night, and next morning they two proceeded with him. The others joined on the road, and when they reached a preserved jungle near Jheria, prisoner struck Elahee Bux with a club two blows on the neck; he fell off his horse, and Boodhoo then struck him behind the ear with a club, so that he died. Prisoner and Phekla dragged the body into the jungle and left it there. The horse was let loose; some of the property was divided and some cooking pots were thrown into a spring-well (*daree*) at Ronjoo in Soneepora.* The sword was left with Jerka Telee. Phekla said he had sold the bullock to Gooroo-prosad for five rupees.† Prisoner at first hid the sword. The club used was a green stick and was thrown away.

“Before the principal assistant this prisoner omits the name of Ayta, and adds that the murder occurred at 1 P. M., and that Elahee Bux lived for half an hour.

“Prisoner Boodhoo corroborates generally the confession of Geraya—confesses that he himself struck the deceased one blow behind the ear.

“Prisoner Ram, on 1st January, confesses that he was present at the murder, but took no active part in it, and got no share of the property. On 20th January adds, that he got a share, and that Morha Pahun and others had instigated the murder by promise of reward.

“Before the principal assistant this prisoner, being asked if he has confessed the murder, replies that he had not confessed. Prisoner Morha states that he did not order the murder or send

* This well was searched, nothing found.

† Gooroo-prosad denied this.

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any one to call Elahee Bux ; confesses that Phekla and Oodai left twelve head of cattle with him in Cheyt last, and that in Aghun following, seeing the prisoner Geraya with a cloth which belonged to Elahee Bux on him, asked him about it: Geraya then confessed the murder and prisoner kept it secret.

" Prisoner Bishnath confesses that he saw a cloth belonging to Elahee Bux on Geraya, who confessed to him that he had murdered Elahee Bux. Prisoner did not disclose this.

" Prisoner Ayta confesses that the prisoner Ram left a sword with him last year, told him of the murder of Elahee Bux, and swore him to secrecy.

" No. 14 Witness Sookool, } — Prove that the sword in court
 " 15 " Kundna, } was found with Jerka Telee.

" 16 " Toorab Alee Khan, } — Prove that the sword
 " 17 " Himmut Alee, } in court belongs to Elahee Bux. The witness Toorab Alee further states that he was in the habit of meeting Elahee Bux, and had asked the prisoner Morha about him, who said that he had gone home. Morha denied having any of Elahee Bux's cattle.

" No. 18, witness Koonjra, states that about a year ago Elahee Bux had come to Khut Khora village to collect rents and thence came to Sussea, where Lullit Ram darogah* sold to him two bullocks and sent witness to accompany him to Dhoroa Mochee. Witness went with him, and at Arahra the night fell, and there they stopped. About dusk the prisoners Boodhoo and Geraya came from Dhoroa Mochee and called *Goonjhoo ! Goonjhoo !* (manager of a village.) Elahee Bux asked what was the matter, they said 'the saika (rent in produce) and rent are ready, and 'the Lall calls you to write the leases, come.' Next morning Elahee Bux desired witness to return, which he did, and Elahee Bux and Geraya and Boodhoo went towards Gobindpore. From witness's house to Dhoroa Mochee is a day's journey. Witness had not known the prisoners, before he made over charge of the bullocks to them, and they told their names. From Dhoroa Mochee to Arahra is two miles.

" No. 19, witness Jerka, states, that last year in Sawun the prisoner Ram pledged the sword now in court to witness for some rice. In Aghun the prisoner was taken up and witness gave up the sword when asked for by the police officers.

" No. 20 Witness Bhondla, } — State nothing.
 " 21 " Ramjee, }
 " 22 " Boodhoo, } — State that Elahee Bux came
 " 23 " Ledwa, } to Lullit Ram's, brought two
 head of cattle, and that Koonjra (witness No. 18) was sent
 with him.

* A salt darogah, now out of employ, not a police officer.

" No. 24, witness Toontooneea, states, that he was at Arahra; corroborates the evidence of the witness Koonjra.

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" No. 25, witness Moorgee, to the same effect.

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" No. 27, " Shuan Khan, } —State that they saw Ela-
" 31, " Hukdad Khan, } hee Bux at Aurungabad

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last year.

" The prisoner Geraya, in his defence, says that his first confession was extorted by the prosecutor, who kept him eight days in water, and before the assistant he confessed under the teaching of prosecutor. The sword in court is prisoner's own property.

" The prisoner Boodhoo says, the cloth is his own, and as to his confessions makes a defence similar to that of the prisoner Geraya.

" The prisoner Ram says that he got the sword from the prisoner Geraya, and pledged it for some rice to the witness Jerka, and that he has not made any confession.

" The prisoner Morha says that the bullocks and gear were left with him by the cattle drivers, and when prosecutor came to make inquiry, prisoner at first objected, because Elahee Bux was not present. The drivers said they left them at his desire, and when prisoner saw that his coming was delayed he told it to Boodhoo Khan, a countryman of Elahee Bux, and to no one besides.

" The prisoner Bishnath denies having made any confession.

" The prisoner Ayta says that the prisoner Ram offered him the sword now in court for some rice, but that he would not take it, and has not made any confession.

" The witnesses for the defence state nothing in exculpation of any of the prisoners.

" The jury whose names and professions are entered below,* find the prisoners Geraya and Boodhoo guilty on their own confessions of the murder; the prisoner Ram guilty as an accomplice present at the murder; the prisoners Morha, Bishnath and Ayta guilty of privity after the fact.

" Though there is no reasonable cause for doubt that Elahee Bux has been murdered, yet the absence of a body renders the proof derived from confessions less certain than it might otherwise be, still the confessions of the prisoners Geraya and Boodhoo, being circumstantial and consistent, and corroborated by the evidence, so far as it goes, of the witnesses Koonjra, (No. 18,) Toontooneea, (No. 24) and Moorgee, (No. 25,) cannot be rejected. The motive to the murder is ostensibly robbery, but there are manifest grounds for supposing that it was instigated by other parties. The position of Elahee Bux, an isolated foreigner,

* Lalla Gujraj Singh, *mookhtar*; Lalla Luchminarain, *mookhtar*; Ram Gopaul Chutturaj, *mookhtar*.

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having money dealings among a people to whom such foreigners are known to be obnoxious, is a position that gives a strong color of truth to the assertion of the prisoners, that they were set on by others. I have no hesitation in finding the prisoners Geraya and Boodhoo guilty, according to their own confessions, of robbery and murder. That the prisoner Ram got the sword and pledged it with Jerka he admits, and Jerka has proved, and the prisoner confessed before the police officers, that he was present at the murder. The case of this prisoner is very remarkable. He is a strong man, in full vigour of body, but is a leper, and has lost nearly all the fingers of both hands; he is therefore a strange associate to choose for the commission of a day-light murder, and the only conjecture that I can offer is, that the prisoners took him with them to disarm suspicion. I find him guilty as an accomplice. As to the prisoner Morha, the possession of the cattle by him, and his own confession that Geraya told him of the murder and that he concealed it, are sufficient to convict him of being accessory after the fact. Against the prisoners Bishnath and Ayta, the offence charged is privy to the murder, but I do not find that the degree of knowledge to which they confess is criminal, for they had no means of proving what the other prisoners may have told them, and of the fact itself they had no personal knowledge, I consider these two prisoners not guilty. I would accordingly recommend that the prisoners Geraya and Boodhoo be sentenced to imprisonment for life, in transportation with hard labor in irons; that the prisoner Ram be imprisoned for fourteen (14) years, (in a leper asylum, if possible,) and that the prisoner Morha be imprisoned for ten (10) years, with labor in irons. The prisoners Bishnath and Ayta have been acquitted and discharged."

Remarks by the Nizamut Adawlut.—(Present: Mr. A. J. M. Mills.)—"The deputy commissioner and the jury concur in the conviction of the prisoners Nos. 1, 2 and 3 of murder, and the prisoner No. 4 of being accessory after the fact.

"There is no reason to doubt the truth of the prosecutor's story or the evidence of the witnesses Nos. 18, 24, and 25, which establish the fact of the prisoners Nos. 1 and 2 coming to the village of Arakra, and of setting out with the deceased on the following morning to accompany him to his residence at Dhoraa Mochee.

"The prisoners Nos. 1, 2 and 3 were apprehended on the information of witness No. 18, and the two former confessed on the day they were seized, and the prisoner No. 3 on the day succeeding that of his arrest, that, at the instigation of others, they murdered the deceased on the road, dragged the body into the jungle where they left it, and let loose the horse on which

he was riding. The two first named prisoners repeated their confessions to the principal assistant; and there is good proof that the statements made by all the prisoners, both to the police and the principal assistant, were voluntary and free.

"A sword, which is recognized as the property of the deceased, was found with the witness Jerka, who deposed to the prisoner No. 3 having pledged it* to him, and thirteen head of cattle including a buffalo were given up and admitted by the prisoner No. 4 to belong to the deceased. The deceased has not been heard of from the date of his disappearance.

"The confessions are thus corroborated by strong facts, as well as by the general probability that the deceased might have been murdered on account of his money-dealings, which had made him obnoxious to the villagers. The proof of the *corpus delecti* is however imperfect. The prisoners, Nos. 1, 2 and 3, pointed out the places where the body and the club were left in the jungle; but the latter was not found, nor were there any human bones to be seen at or near the spot; no trace also of the deceased's horse was to be obtained. If the deceased had been murdered at the spot indicated, it is not unreasonable to suppose that something might have been found there though nearly a year had elapsed to corroborate the fact. The evidence is sufficiently strong to warrant the finding of a verdict of conviction, but it amounts to something less than a moral certainty of guilt, and I cannot, therefore, bring myself to ground upon it an irrevocable sentence. In the precedents of this court, see the case of Kumer Alee *versus* Tofanee, decided on the 28th of February 1851, and the case of Ramkanye Surmah *versus* Bissonauth Chung, decided on December 20th 1851, where a sentence of death was passed, though the body was not found; the conviction rested upon confessions, the truth of which was more clearly and satisfactorily established than is the case here. I therefore sentence the prisoners Nos. 1, 2 and 3 to imprisonment for life, the two former in transportation and the latter, on account of his leprous state, in the Allipore jail. Though the latter does not admit that he struck the deceased, he accompanied the others with the deliberate intention to kill the deceased, and was present at the murder. He therefore equally with them is deserving of the punishment meet for so heinous a crime.

"The prisoner Morha, (No. 4,) had possession of the cattle of the deceased and admitted that he was cognizant of the murder.

* An old garment was taken from the person of No. 2, and identified by the witnesses before the magistrate, but as the deputy commissioner omitted to interrogate them on this point at the trial, it cannot be received as evidence against the prisoner.

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1852.	I convict him of being an accessory after the fact. He is one of
August 31.	the head men of the village, and is implicated in the confessions
Case of	of the prisoners as one of the instigators of the murder. I do
GERAYA and	not think the justice of the case will be satisfied by less than
others.	a sentence of fourteen (14) years' imprisonment, with labor and
	irons, in banishment."

PRESENT:

A. J. M. MILLS, Esq., *Officiating Judge.*

AGHAJAN KHAN

GOOLMEER KHAN.

CRIME CHARGED.—Attempt to murder Roostum Khan, adopted son of the prosecutor, by severely wounding him.

CRIME ESTABLISHED.—Wounding Roostum Khan, adopted son of the prosecutor.

Committing Officer, Mr. G. D. Wilkins, officiating magistrate of the Central Division of Cuttack.

Tried before Mr. M. S. Gilmore, sessions judge of Cuttack, on the 6th July 1852.

Remarks by the sessions judge.—“ In this case, which occurred in the town of Cuttack at day-break, on the morning of the 11th May last, there were two eye-witnesses.

“ The prisoner confessed before the magistrate that he inflicted the wounds on the face of Roostum Khan while he was sleeping, because he had told him that he had cohabited with his wife, and he had suspected him of intriguing with her, for four years past. He further stated that he intended to cut his nose and ears, but it was dark and he did not know where he inflicted the wounds.

“ Before this court he pleaded that he was not in his right senses, and did not know what he did.

“ The *futwa* of the law officer convicts the prisoner of wounding only, and acquits him of the attempt to kill.

“ It appears the prisoner wounded Roostum Khan, the prosecutor's adopted son, while he was asleep, with a razor, as he himself states, because he suspected him of intriguing with his wife, and although none of the witnesses cited by him deposed to having heard of the existence of such intrigues until after the occurrence, Roostum Khan, the wounded man, himself admits that the prisoner had for four years suspected him; and it is evident, from the nature and locality of the wounds, which are not severe, taking into consideration the description of the instrument with which they were inflicted, that the prisoner had no intention to kill Roostum Khan, but merely to disfigure him; for as he was sleeping at the time, he could have had no difficulty in killing him if he wished to do so. Therefore inferring that he inflicted the wounds from jealousy, and as they were not dangerous, it is ordered, in concurrence with the *futwa*, that the prisoner Goolmeer Khan be imprisoned for three (3) years, and pay a fine of

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On appeal
the conviction
and sentence
were affirmed.

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rupees two hundred (200), within one month, or to undergo the imprisonment, with labor, until the fine be paid."

Remarks by the Nizamut Adawlut.—(Present : Mr. A. J. M. Mills.)—"The prisoner has appealed. His only plea is that he was not in his right senses when he did the deed. I see no grounds for interfering with the sentence."

PRESENT :

A. J. M. MILLS, Esq., *Officiating Judge.*

GOVERNMENT

versus

PRAWNKISHTO MOHAPATUR (No. 46) AND HUREH-KISHTO SINGH (No. 47).

1852.

September 2.

Case of
PRAWNKISH-
TO MOHAP-
ATUR and ano-
ther.

CRIME CHARGED.—Forgery, *viz.*, with having fraudulently forged, or caused to be forged and given into the *ferosh ameen*, a *jumma-wasil-bakee*, receipts for property and a receipt of a notice issued under Section XIII. Regulation V. of 1812; secondly, aiding and abetting in the above.

Committing Officer, Mr. V. H. Schalch, magistrate of Midnapore.

Tried before Mr. W. Luke, sessions judge of Midnapore, on the 9th August 1852.

Remarks by the sessions judge.—"The particulars connected with this trial are as follows :—

"On the 15th November last, one Jonardhun Doss, accompanied by a police officer and other attendants, proceeded to the village of 'Khasmalee' in pergunnah Majnamootah, and on the plea of Doorgachurn Ghurye and Roopadthur Ghurye, the witnesses Nos. 1 and 2, being revenue defaulters, attached and carried off all the property that could be found belonging to them.

"A few days subsequent to these occurrences, a proclamation was made in the said witnesses' village by order of the '*ferosh ameen*,' that the goods and chattels attached on the 15th November, would be sold in liquidation of a claim for rent, preferred by 'Prawnkishto Mohapatur,' prisoner No. 46. In order to stay the sale, the witnesses aforesaid proceeded to the '*ferosh ameen*'s' office, filed the requisite security and then instituted a suit under Regulation V. of 1812, before the deputy collector, who fortunately was in the neighbourhood, to test the validity of the prisoner's claim. The deputy collector's inquiry resulted in both prisoners being made over to the magistrate to stand their trial on the charges on which they were now arraigned.

"It is in evidence that on the 8th Aghun, corresponding with 22nd November, the prisoners 'Prawnkishto Mohapatur' and

Held that the prisoners having been convicted of uttering forged documents, it was unnecessary to defer their trial under Clause 3, Section IX. Regulation XVII. of 1817.

'Hurehkiшто Singh' proceeded to the office of the ferosh ameen at Contai, and that Prawnkishto then and there presented to the ameen four documents—a petition (A), a receipt of notice (B), a *jumma-wasil-bakee* account (C), and a receipt for property attached (D), and that the identity of the prisoner No. 46 with the party presenting the petition, was deposed to before the ameen by the prisoner No. 47, Hurehkiшто. This petition describes the prisoner Prawnkishto to be a puttadar in mouza Adampore, and the witnesses Nos. 1 and 2, his tenants and defaulters, and prays that the property of the latter, previously distrained, *viz.*, on the 1st Aghun, may be sold to liquidate his (petitioner's) claim. The document B, bearing the signature of the village police, acknowledges the service of the notice on the witnesses Nos. 1 and 2. The document C exhibits the detailed particulars of the petitioner's claim, and the document D acknowledges the receipt by the village police of sundry chattels previously attached by the petitioner, prisoner No. 46.

"The prisoners plead 'not guilty,' and set up an *alibi* in defence, which they fail to establish. The points for consideration are—*first*, whether the prisoners are the persons who appeared before the ferosh ameen on the 8th Aghun 1259 and filed the documents above alluded to; and *secondly*, whether these documents are forgeries and whether the prisoners knew them to be such when presented to the ameen.

"The ferosh ameen swears to the identity of both the prisoners, *viz.*, to Prawnkishto Mohapatur as the person who gave him the four documents, A, B, C and D; and to the prisoner Hurehkiшто Singh as the person who deposed to Prawnkishto's identity as a land-holder in mouza Adampore. This man's evidence is consistent throughout, and is corroborated in most of its important features by his assistant Thakoordoss Dutt. The latter declares his inability to identify the prisoner Prawnkishto Mohapatur as the party who accompanied the prisoner Hurehkiшто, on the 8th Aghun, but I attach no credit to this statement, as his manner whilst giving his evidence was that of a person stating what he knew to be untrue, and his reluctance to appear and give evidence in this court justifies the suspicion that he has been tampered with.

"The evidence, however, of the ferosh ameen and that of the prisoner Hurehkiшто himself, given before the deputy collector, which has been duly certified in this court, leaves no doubt as to Prawnkishto's identity, and to his being the party who gave the ferosh ameen the four documents above alluded to.

"There is nothing on record to show who forged these documents, but that they are forgeries, and that the prisoner Prawnkishto gave them to the ferosh ameen knowing them to be such, is, I think, clearly proved by the witnesses who depose

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Case of
PRAWNKISH-
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ther.

that Prawnkishto does not live at mouza Adampore and possesses and has never possessed any lands there; who deny all knowledge of the receipts of notice and property attached to which their names are affixed, and who swear to Prawnkishto's being employed as a *koberaj* in the establishment of Raja Issan Chunder Roy, the proprietor of the village Khasmalee, in which the witnesses Nos. 1 and 2 reside.

"The prisoner Hurehkihto, at the time the occurrences related took place, was a mookhtar or agent on the part of Raja Issan Chunder Roy, and consequently might have known that the prisoner Prawnkishto Mohapatur, a fellow-servant, was not a land-holder in Adampore, as he represented himself to be. The presumption is, therefore, that in deposing to Prawnkishto's identity before the ameen as a *bond fide* land-holder, his motive was to aid and promote the fraud which the latter committed.

"The prisoner Prawnkishto would appear to be the most culpable of the two according to the evidence; he was one of the parties who accompanied Jonardhun Doss on the 1st of Aghun and assisted in carrying off the witnesses' property. His subsequent proceedings, which have given rise to the present inquiry, were therefore deliberate, and adopted no doubt to save himself and others the consequences that were likely to follow the witnesses' appeal to the deputy collector.

"The assessors declare the prisoner Prawnkishto Mohapatur guilty of filing before the ferosh ameen forged documents, knowing them to be such, with a view to procuring their issue, and No. 47, Hurehkihto Singh, with aiding and abetting in the same. In this finding I concur. There is every reason to believe that the prime instigator in the transactions herein related is Raja Issan Chunder Roy, for whose benefit the property was violently carried off, and in whose house it was subsequently discovered. The prisoners are his creatures and dependants, and have no doubt committed the acts of which they are accused under his instructions. I have accordingly sentenced the prisoner Prawnkishto Mohapatur to three (3), and Hurehkihto Singh to two (2) years' imprisonment, both with labor, commutable to a fine of fifty (50) rupees, to be paid within one month from the date of sentence, and I submit my proceedings for the approval of the superior court with reference to the provisions of Clause 3, Section IX. Regulation XVII. of 1817."

Remarks by the Nizamut Adawlut.—(Present: Mr. A. J. M. Mills.)—"The prisoners are not convicted of forgery but of uttering forged documents. As Clause 3, Section IX. Regulation XVII. of 1817 refers only to the former crime, it was unnecessary to refer the case for the final sentence of this court, but the prisoners having appealed, I proceed to dispose of the appeal.

"There can be no question that the documents are false and fabricated, and were put in for the purpose of sustaining a fictitious and fraudulent demand. The only points for consideration are, whether they were put in by the prisoner Prawnkishto Mohapatur, and whether Hurehkishto Singh aided and abetted in the fraud.

"The evidence of the ferosh ameen is distinct and conclusive against both prisoners, and is in no way impeached by them. I see no reason whatever to discredit it. It is supported as far as it goes by the testimony of Thakoordoss, by the evidence of the prisoner Hurehkishto Singh before the deputy collector, and the admissions of Prawnkishto Mohapatur himself to that officer, which are to the effect that he had served the notice and affixed his signature to the fabricated *jumma-wasil-bakee*.

"If Hurehkishto Singh had merely deposed to the identity of the party presenting the forged documents to the ameen, it might have been most fairly urged that a guilty knowledge of their contents was not necessarily inferrible therefrom; but he went further, he not only identified the prisoner Prawnkishto Mohapatur, but swore to his being a *bond fide* land-holder in Adampore, whereas from his being a fellow-servant with him in the employ of Issan Chunder Roy, the prime mover in the transaction, he well knew he was a stranger, and did not possess a beegah of land. I convict the prisoners, and under the peculiar circumstances of the case, confirm the sentence proposed by the sessions judge to be passed upon them."

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September 2.

Case of
PRAWNKISH-
TO MOHAPA-
TUR and ano-
ther.

PRESENT :

A. J. M. MILLS, Esq., *Officiating Judge.*

SUBRAM DOSS

*versus*GOPAL DEB (No. 6), SHEIKH ARUBDEE (No. 7) AND
SHEIKH HEEDAH (No. 8).

1852

September 3.

Case of
GOPAL DEB
and others.

The sentence passed by the sessions judge upon the prisoners was affirmed by the Nizamut Adawlut, notwithstanding their plea that the charge against them was the result of a conspiracy.

CRIME CHARGED.—Nos. 6 and 7, 1st count, committing burglary in the house of prosecutor's master, and theft of cash and property valued at rupees 228; 2nd count, knowingly receiving and possessing property obtained by the above theft; and prisoner No. 8, 1st count, knowingly receiving and possessing property obtained by the above theft; 2nd count, being accessory before and after the fact of the above theft.

CRIME ESTABLISHED.—Nos. 6 and 7, burglary, and No. 8, knowingly receiving property obtained by burglary.

Committing Officer, Mr. A. Abercombe, officiating magistrate of Mymensing.

Tried before Mr. R. E. Cunliffe, sessions judge of Mymensing, on the 27th July 1852.

Remarks by the sessions judge.—“The prosecutor's house was entered on the night of the 24th May 1852, and property (chiefly money) carried off to the value of rupees 228. No one was suspected at the time, but on the police proceeding to the spot, No. 6, who lives close to the prosecutor's, ran away, and being apprehended, confessed having committed the burglary with No. 7, who did the same on being apprehended, and No. 8, implicated in the confessions of the others, admitted the receipt of part of the property which was given up by his wife from the place it had been buried. All the prisoners reiterated their confessions before the officiating magistrate. In this court No. 6 alleged enmity with the owner of the property and ill-treatment by the police, and named witnesses to an *alibi*, who knew nothing about it. No. 7, ill-treatment by the prosecutor and police, and witnesses to character, who gave evidence in his favor. No. 8, that he had been implicated by No. 6 out of spite, and named witnesses to character, who deposed accordingly. The *futwa* of the law officer convicts Nos. 6 and 7 of burglary and No. 8 of knowingly receiving property obtained thereby. I have punished all alike, as it appears that No. 8 brought No. 7 to the house of No. 6 for the express purpose of committing the burglary and was only unable to go himself from an attack of fever.”

Sentence passed by the lower court.—Each to be imprisoned, with labor in irons, for the period of five (5) years.

Remarks by the Nizamut Adawlut.—(Present: Mr. A. J. M. Mills.)—“The prisoners have appealed, alleging that the charge

is the result of a conspiracy formed by the prosecutor and darogah against them. They severally confessed before the darogah, and themselves, or their wives gave up several articles of property, which they admitted had been stolen from the prosecutor's house and had been secreted. The guilt of the prisoners is clearly established, and I confirm the sentence passed upon them."

1852.

September 3.
Case of
GOPAL DEB
and others.

PRESENT :

J. R. COLVIN, Esq., *Judge.*

A. J. M. MILLS, Esq., *Officiating Judge.*

1852.

DEYGABAH NAGA

versus

MANGJAKAM (No. 1), MANGA KOOKEE (No. 2) AND
SHEOLALL KOOKEE (No. 3).

September 3.
Case of
MANGJAKAM
KOOKEE and
others.

CRIME CHARGED.—Prisoner No. 1 with wilful murder, in having attacked prosecutor's village on or about the 24th August 1850, in company with several other armed persons and wilfully killed prosecutor's brother, Nunsaling Naga, by spearing him on the back and cutting off his head with a *dáo* or hatchet; Nos. 2 and 3, Manga Kooke, and Sheolall Kooke charged with being accomplices before the fact, having accompanied and assisted prisoner No. 1 in the attack on prosecutor's village, with intent to commit murder.

To revenge a murder being with the Kookees a sacred and honorable deed, and the provocation, which the prisoners received having been of the gravest kind, the head of their clan having been killed, under circumstances which must to them have borne the character of a wanton murder, and their chieftain, when dying, having called upon his clan to retaliate his death, the Nizamut Adawlut agreed with the local authorities in the propriety of passing a mitigated sentence, and considered that proposed by the joint magistrate, amply sufficient to satisfy the ends of justice, exempting also the imposition of irons.

Committing Officer, Lieutenant G. F. F. Vincent, joint magistrate of Nowgong, Assam.

Tried before Major H. Vetch, deputy commissioner of Assam, on the 5th August 1852.

Remarks by the deputy commissioner.—“ I have the honor to submit, to be laid before the Nizamut Adawlut, the proceedings on the above trial held before the joint magistrate of Nowgong, with the assistance of a native jury and referred to this court in the manner prescribed in Clause 5 of Section II. of the rules for the administration of criminal justice in Assam.

“ I have annexed* a copy of the joint magistrate's letter,

* No. 4 of 1852.

From Lieutenant G. F. F. Vincent,

Joint Magistrate, Nowgong, Assam.

To the Deputy Commissioner of Assam, Gowahatty,

Dated Nowgong, 5th June 1852.

“ SIR,—I have the honor to submit the Bengulee proceedings of

tence, and considered that proposed by the joint magistrate, amply sufficient to satisfy the ends of justice, exempting also the imposition of irons.

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September 3.

Case of
MANGJAKAM
KOOKEE and
others.

No. 4, of the 5th June last, which accompanied the proceedings of this court.

"From the deposition of the prosecutor it appears that about two years ago the Nungai Nagas were all assembled, keeping Gena (or Deotee pooja), a rite from which strangers are excluded, when a party of Kookee elephant-hunters arrived at the village through which lay their road and sought to obtain a passage; which being denied, a quarrel arose, and the Kookees went

* Court of magistrate, zillah Nowgong, Assam.
No. 4, of the calendar for the first sessions of 1852.

Deygabab Naga, prosecutor,
versus

	Names of Prisoners.	Date of apprehension.	Date of commitment.
1.	Mangjakam Kookee, son of Nilehul Kookee, aged 50 years,	15th March 1852,	6th June 1852.
2.	Manga Kookee, son of Sailoll Kookee, aged 40 years,	24th ditto,	
3.	Sheolall Kookee, son of Senath Kookee, aged 45 years,	„ ditto,	

Charge—No. 1, prisoner Mangjakam Kookee, charged with wilful murder, in having attacked prosecutor's village, on or about the 24th August 1850, in company with several other armed persons and wilfully killed prosecutor's brother, Nunsaling Naga, by spearing him on the back and cutting off his head with a *dao* or hatchet.*

Nos. 2 and 3, Manga Kookee and Sheolall Kookee are charged with being accomplices before the fact, in having accompanied and assisted No. 1 prisoner in the attack on the prosecutor's village, on or about the 24th August 1850, with intent to commit murder. Verdict of *punchayet*, guilty. Opinion of joint magistrate, ditto; ditto.

Measure of punishment recommended—That the prisoner No. 1, Mangjakam Kookee, be sentenced to five (5) years' imprisonment, with labor in irons, and Nos. 2 and 3, Manga and Sheolall Kookees to be imprisoned for one (1) year with labor in irons.

and shields, ready for battle. They broke through the stockading on the north side of the village, and entering it threw stones at the Nagas, who in number between fifty and sixty assembled together and prepared for action. Prosecutor's elder brother, the deceased Nunsaling Naga Gaum Boorah, forbade their fighting, but neither side attending to his prohibition, began the fight by throwing stones, and an arrow from the bow of a Kookee struck the forehead of Hengalahpot, a Naga of prosecutor's village, but who shot the arrow he cannot say. He also heard that the Nagas of his village had wounded two of the Kookees, after which he fled, and the Kookees retreated to their own village. Two days after, about 8 in the morning, he returned to his village, when seeing the prisoners with three hundred, or three hundred and fifty other Kookees coming towards the village, prepared for battle, he and all the Nagas of

the trial, conducted by me, noted in the margin,* with the aid of a *punchayet* or jury, consisting of the following members, viz., Baboobull Burmon, Kristomoram Burmon, Sempoo Kookee Raja, Mangting, Khop Kookee Raja, and Saichoonglall Kookee.

"Secondly,—The prosecutor Deygabab Naga states, that about two years ago, on a certain day, date unknown, about the hour of 9 A. M., all the Nagas of his village were assembled together, and agreeably to the Naga custom, keeping 'Gena,' or Deotee pooja, (a religious rite) when certain Kookees, (names unknown,) of the prisoners' village, bent on an elephant-hunting excursion, wished to pass through the village, but the Nagas forbidding them a quarrel arose between them and the Kookees; the latter leaving the village shortly returned on the same day with one hundred and fifty other Kookees, (whose names he does not know, nor could he now recognize them,) all armed with spears, hatchets, bows,

away, but returned the same day, with about one hundred and fifty others, all armed for battle, and having broken through the stockading of the village, commenced throwing stones; meanwhile about fifty or sixty Nagas collected to oppose them. The deceased Nunsaling Gaum Boorah forbade the fight, but in vain, and an arrow shot by a Kookee struck Hengalahpot Naga on the forehead, and deponent having heard that the Nagas had wounded two of the Kookees with spears, he fled; the Kookees

1852.

September 3.

Case of
MANGJAKAM
KOOKEE and
others.

his village fled, but his brother Nunsaling Naga remained in the village; the prisoners finding him alone murdered him and retired to their own village, when prosecutor also returned to his village, and saw the corpse of his brother lying on the ground with the head cut off: he did not then see who killed his brother, nor can he say who the person was, but having understood that No. 1, prisoner Mangjakam Kookee, is the murderer of his brother, he, Mangjakam Kookee, having confessed that with a spear he killed his brother and with a hatchet cut off his head, and the remaining two prisoners, No. 2, Manga Kookee, and No. 3, Sheolall Kookee, having confessed that they accompanied the above-named prisoner on that occasion, he prefers the present charge against No. 1, prisoner Mangjakam Kookee. Prosecutor further states, that on the body of deceased there were several marks of wounds inflicted by spears and *dāos*, and the head had apparently been cut off with a *dāo*. No enmity had previously existed between the inhabitants of prosecutor's village and the Kookees, and the sole origin of the quarrel was the attempt on the part of the Kookee elephant-hunters to break in upon the religious festival of the Nagas.

"All the prisoners plead guilty to the charges exhibited against them.

"Leupong Kookee deposes, on oath, that about two years ago, on a certain day, about the hour of 9 A. M.,

PLKA.—A. Leupong Kookee, No. 1, witness for the prosecution. Mangjakam Kookee, No. 1 prisoner, of his village, now present in court, and Sheolall Kookee, No. 3 prisoner, and Manga Kookee, No. 2 prisoner, also present, and about eighty or ninety other Kookees, whose names he does not remember, armed with spears, hatchets, bows, and shields, prepared to do battle, proceeded to the village of prosecutor, and the prisoner Mangjakam Kookee, now present, killed Nunsaling Naga Gaum Boorah, brother of prosecutor, near the stockade surrounding the village, by stabbing him on the back with the spear in his hand, Nunsaling ran about the distance of twelve or thirteen nulls,* and then at the point of death fell to the ground.

* One null—eleven and half feet.

The above-mentioned prisoner Mangjakam Kookee chased him, and with the hatchet (*dāo*), in his hand, cut off the deceased Nunsaling's head, and returning to the prosecutor's village hung it (the head) up in a house there. The witness states he saw the whole occurrence, and subsequently returned to his own house—What became of the head afterwards he does not know. At the time No. 1, prisoner Mangjakam Kookee, was murdering Nunsaling, he was about ten or eleven nulls distant, but did not go near the dead body, and immediately after the murder returned to his own village. He saw marks of blood at the time on the hatchet in the hand of the prisoner Mangjakam Kookee, and likewise on his left arm; he further states that the day before the murder, Choonghoomung Kookee and certain other Kookees (names unknown,) of prisoners' village, bent on an elephant-hunting excursion, wished to pass through the village of prosecutor: the people of the village said they, (the Kookees,) had broken their Gena, or 'Deotee Pooja,' and

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also retreated to their own village. Two days after he returned, and about 8 A. M., seeing the prisoners and a party of about three hundred or three hundred and fifty Kookees approaching prepared for battle, he, and all the Nagas of the village, fled, with the exception of his brother Nunsaling, who, staying behind, was murdered by the prisoners. After the Kookees retired, prosecutor came back and found his brother's headless corpse lying on the ground. He did not himself see who killed his brother,

a quarrel thereon arose between the Nagas and the hunters, and blows were given on each side. The Kookee huntsmen fled to their village and related what had taken place, whereupon Tangmong Kookee Raja, the elder brother of No. 1 prisoner, Mangjakam Kookee, and Paodah, alias Bhounpao Kookee Muntree, accompanied by one hundred or one hundred and fifty Kookees, (names unknown,) proceeded to the village of prosecutor to investigate the matter and demand retribution. On arrival at prosecutor's village, the Nagas quarrelled with the raja and wounded him and the Muntree with their spears, on which the raja returned to his house and the same night died of his wound. On this account, solely, did Mangjakam, on the following day, take with him Sheolall and Manga Kookees and others, and proceed to the village of prosecutor, and murdered the deceased Nunsaling Naga. Beside the cause given above, witness states, he is not aware that any quarrel existed between the prisoner and deceased or prosecutor, or any of the persons of prosecutor's village. Witness accompanied Mangjakam Kookee, No. 1 prisoner, and the other Kookees of his village to the village of the prosecutor, and was consequently an eye-witness of the murder.

"Pahtol Kookee.—The evidence of this witness corresponds with that

B. Pahtol Kookee No. 2, witness for the prosecution.

of the preceding, with the exception of a few discrepancies as to the number of Kookees engaged in the attack on the prosecutor's village, &c., &c., but of no material consequence. This witness states that he saw no marks of blood on the body of prisoner No. 1 after the murder, as immediately on its taking place he returned to his home.

C. Sharlon Kookee No. 3, witness for the prosecution.

"Sharloon Kookee.—This witness states he did see marks of blood on the hatchet (dao) and left arm of No. 1 prisoner.

"Tanung Kookee deposes to the leading facts as related by the first

D. Tanung Kookee No. 4, witness for the prosecution.

witness and to his having accompanied the party in the attack on prosecutor's village.

He did not, however, see the murder committed, being some distance behind the foremost body of Kookees concerned in the attack. He subsequently saw the head of the deceased Nunsaling Naga lying on a stone in front of a house in the Naga village, and heard from the Kookees that Mangjakam Kookee, No. 1 prisoner, had killed Nunsaling Naga with a spear, and cut off his head with a hatchet, but who were his informants he does not remember.

"Khaizeelakpal Naga narrates the same story as prosecutor, relative

E. Khaizeelakpal Naga No. 5, witness for the prosecution.

to the origin of the quarrel, and in addition that the gate of the stockade surrounding the village was closed on account of the

'Gena or Naga festival,' mentions the receipt of a wound on the forehead from the arrow of a Kookee when he fled to the Naga village of Sagleoa, where he remained that night, the following morning returned to his own village, and saw the headless body of deceased Nunsaling Naga, after

but understood that the prisoner No. 1, Mangjakam Kookee, was the person, he having confessed that he had speared deceased and afterwards cut off his head with a *dáo* or hatchet; also that the prisoners No. 2, Manga and No. 3, Sheolall, confessed to having accompanied the prisoner No. 1, when he committed the murder. Further, that there were the marks of several spear wounds on the body of deceased, and that the head had apparently been cut off with a *dáo*. No previous enmity had existed

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which he buried the body agreeably to Naga custom. There were several wounds on the body of deceased, evidently inflicted with spears and hatchets and marks of the head having been cut off with a hatchet.

"Kaboa Naga narrates the same story as prosecutor, relative to the origin and continuation of the quarrel; bears evidence to an arrow from a bow of one of the Kookees having struck Khaizeelakpal,

F. Kabao Naga No. 6, witness for the prosecution.

the last witness, on the forehead; also to having seen the headless body of the deceased Nunsaling Naga, and to having assisted in the burial of the corpse, and further to having remarked several wounds of spears and hatchets on the body of deceased and marks of the head being cut off with a hatchet.

G. Juggurnath Singh, burkundaiz, No. 7, witness for prosecution.

H. Kurrum Singh, Sepoy No. 8, witness for prosecution.

I. Kasee Singh Burkundaiz No. 9, witness for prosecution.

J. Sombaroo Sepoy, No. 10, witness for prosecution.

"Juggurnath Singh } —Depose to the
"Kurrum Sepoy } voluntary confession of No. 1 prisoner, Mangjakam Kookee, before the joint magistrate, and to his apprehension by the joint magistrate at the thanna of Haplong Hajbo, whither he had come with other persons of his village.

Kasee Singh Bur- } —Depose to the vol-
kundaiz, and Som- } untary confession of
baroo Sepoy } No. 3 prisoner, Sheo-
lall Kookee, and No. 2 prisoner, Manga Kookee, before the joint magistrate.

Defence.—"No. 1 prisoner, Mangjakam, fully and freely confesses that he murdered Nunsaling Naga, by stabbing him on the back with a spear and cutting off his head with a hatchet (*dáo*), and pleads, in extenuation and justification of his crime, that his elder brother, Tangmong Kookee Raja, was, in the first instance, killed by the Nagas, he having been wounded by a spear thrown by the Nagas of Ningai, and having died of his wound on the night of the day on which he received it. He relates the same story, relative to the origin and continuation of the quarrel between the Nagas and the Kookees, as that told by the prosecutor and other witnesses, and states that, agreeably to the custom of his tribe, he had revenged his brother's death on the succeeding day by the murder of one of the offending Nagas; moreover, that he was not at the time aware he was committing any crime. No. 2 prisoner, Manga Kookee, fully and freely confesses that he accompanied No. 1 prisoner, Mangjakam Kookee, to the attack on the Nagas' village; detailing the same story as given by No. 1 prisoner, Mangjakam Kookee, prosecutor, and other witnesses, relative to the origin and continuation of the quarrel between the Kookees and Nagas, and pleading in extenuation that he neither murdered any one nor even used his weapons in any way. No. 3 prisoner, Sheolall Kookee, fully and freely confesses the charge laid against him, and his defence is a mere repetition of that of the last prisoner No. 3, Manga Kookee.

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between the Nagas of his village and the Kookees, and the present quarrel had arisen entirely out of the Kookee elephant-hunters breaking in on the Nagas when engaged in the pooja of Gena.

"All the prisoners pleaded 'guilty' to the charges preferred against them.

"Depose that about two years ago the prisoner No. 1, Mangjakam, No. 2, Manga Kookee, and No. 3, Sheolall Kookee, and about eighty or ninety other armed Kookees, proceeded to the prosecutor's village, near to the stockade of which prisoner No. 1 killed the deceased Nunsaling Naga Gaum Boorah, by spearing him on the back, after which

Leupong Kookee.

Pahtol Kookee.

Sharlon Kookee.

"The jury, by the evidence adduced and the full and free confessions of all the prisoners, find No. 1, Mangjakam Kookee, guilty of wilful murder, in having

Verdict of Punchayet. wounded Nunsaling Naga with a spear, and subsequently cut off his head with a hatchet, and No. 2, prisoner Manga Kookee, and No. 3, prisoner Sheolall Kookee, guilty of being accomplices, in having accompanied No. 1 prisoner, Mangjakam Kookee, to the attack of prosecutor's village with intent to commit murder.

"In the verdict of the jury I entirely concur, but I consider that a mitigated punishment should be awarded the prisoners for the following cogent

Opinion of the Joint Magistrate. reasons:—

"The first quarrel that led to such lamentable and disastrous consequences originated in a mistake, the Kookee elephant-hunters travelling along the high-way, which lay through the village of Manga, found the gates of the stockading* of the village

* All villages in Northern Cachar are surrounded more or less by a kind of stockade built of stakes of wood or bamboos.

closed to bar their progress, without, in their opinion, any cause for such a proceeding, for, ignorant of the language of the Nagas, and they again ignorant of the language of

the Kookees, the hunters could not be made to understand that the Nagas were at the time engaged in the solemnization of the religious pooja of 'Gena,' a rite peculiar to the Nagas alone of all the hill tribes bordering on the Nowgong district, and of so sacred a character that until the ceremony is over, they will allow no stranger to enter the gates of their village, nor indeed will they hold conversation with any person from another, to this I was repeatedly an eye-witness during my thirteen months' residence in the Aungmee Naga hills in 1850-51.

"The Kookees received great provocation by the murder in the first instance by the Nagas of Ningai of their Raja and elder brother of No. 1 prisoner, Mangjakam Kookee, and in 'hot-blood,' without sufficient forethought to commit, assembled their forces on the very night of the raja's death, and on the following morning moved to the attack of the village of Ningai to revenge it, considering the Nagas to have committed an unpardonable crime in the murder of a Raja, whose person is held sacred in the eyes of this wild tribe, and whose blood is never shed in their own internal feuds.

"The clan to which the prisoners belong, only came into the Government territory of Northern Cachar about three or four years since from their own country of Tipperah, and, never having been visited by any European officer, were, consequently, in ignorance that they were transgressing any law, in revenging themselves for the death of the head of

deceased ran about twelve or thirteen nuls (about fifty yards,) and fell to the ground; the prisoner No. 1, who pursued, came up, and with his *dáo* or hatchet cut off the deceased's head, and put it up at one of the houses of the complainant's village. This was done by the prisoner No. 1, in consequence of his brother having received a spear-wound from the Nagas of this village, from the effects of which he had died the previous day.

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"Although this witness did not see the murder committed from being in the rear, he confirms the Tanung Kookee. foregoing evidence, and deposes to having seen the head of the deceased lying on a stone in front of a house, in the Naga village, and to having heard from the other Kookees that the prisoner No. 1 had killed deceased with a spear and afterwards cut off his head. This witness, in his deposition in the foudaree, stated that the raja, finding he could not long survive the wound he had received at the Naga village, directed his people to go there and avenge his death by killing a Naga.

"Confirm the prosecutor's statement respecting the origin of the quarrel, with this addition, that the Khaizeelakpal, and Kuba. gate of the stockade was closed on account of the Gena or poojah. They depose to the former, Khaizeelakpal, having been hit in the head by an arrow, to having fled from the village and to returning next day, when they saw the headless corpse of the deceased, with many wounds on it, and the appearance as if the head had been severed from it by a *dáo*.

"Are witnesses to the apprehension of the prisoner No. 1, at the Hatplong thanna, by the joint magistrate; they are also witnesses to his Jaggurnath Singh and Kurrum Singh. confession before the joint magistrate.

"Are witnesses to the apprehension by the joint magistrate of the prisoners Nos. 2 and 3, at the Kassce Singh and Sombaroo. Kookee village, and to their confessions before him.

their clan by an appeal to arms, as had invariably been their custom in their own country.

"This is the first heinous offence in which any of the clan of new Kookees has been concerned since their emigration to the British territory. In consideration of this, and the foregoing three other reasons, I would strongly advocate a remission of the usual punishment awarded in cases where parties are convicted of the heinous crime with which the prisoners stand charged, and to state it as my conviction, that the ends of justice will be fully answered by sentencing No. 1 prisoner, Mangjakam Kookee, to five (5) years' imprisonment, with labor in irons, and No. 2, Manga Kookee, and No. 3, Sheolall Kookee, to imprisonment for one (1) year, with labor in irons."

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"No. 1 prisoner, while he confesses to the murder as already described, pleads, in extenuation and justification of his crime, that his elder

brother having died from a spear-wound received from the Nagas of Nungai, he, the following day, agreeable to the custom of his tribe, revenged his brother's death by killing one of the offending Nagas, and that he was not aware at the time that he was committing any crime. The prisoners No. 2 and 3 plead that although they accompanied No. 1, they took no part in the deed.

"The verdict of the Native Jury is, that the prisoner No. 1 is guilty of wilful murder, and that prisoners Nos. 2 and 3 were accomplices before the fact, in which verdict the joint magistrate concurs, and for the reasons detailed at length in his English letter, and roobukaree subjoined, is of opinion that the full punishment for the crimes charged need not be inflicted, and considers that the ends of justice will be fully answered by sentencing the prisoner No. 1, Mungjakam Kookee, to (5) five years' imprisonment, with labor in irons, and the prisoners No. 2, Munga Kookee, and No. 3, Sheolall Kookee, to imprisonment for (1) one year, with labor in irons.

"I find the prisoner No. 1, Mungjakam Kookee, guilty of the charge of wilful murder. I find the prisoners No. 2, Munga Kookee, and No. 3, Sheolall Kookee, guilty of the charge of being accomplices before the fact.

"In offering an opinion on the punishment to be awarded, I fully concur with Lieutenant Vincent, the committing joint magistrate, who has had much local experience of the manners and customs of the Nagas of the Nowgong district, that great allowance must be made for the position in which the prisoner No. 1 was placed by the train of circumstances which led to the perpetration of the murder.

"First, the interruption to the progress of the Kookee elephant-hunters, by being rudely repulsed from the Naga village, ignorant as they were of the cause which led to this, (although one which at the same time was quite sufficient to justify the Nagas at the time in refusing a passage). This led their raja to demand redress, which ended in an affray which cost him his life, and who when dying appears to have directed his people to go to the Naga village, and put a Naga to death, to avenge his own. I would also make allowance for the relation in which the prisoner No. 1 stood to the deceased raja, whose son appears to be a minor, and consequently, the obligation to avenge the death of his raja, as well as brother more particularly devolved upon him, and he and his followers, finding the Naga village abandoned by all but

the deceased, yet having thus the means of vengeance placed before him, and while probably labouring under strong excitement and temptation, he committed a cowardly murder, yet in a manner in perfect accordance with the notions of retributive justice among these rude tribes; further, the committing joint magistrate remarks that the clan to which the prisoners belong, only located in the British territory of North Cachar about three or four years ago, and had never been visited by any European officer, and were, consequently, in ignorance that they were transgressing the law in avenging the death of their chief, as was the custom in their country, by an appeal to arms.

"Taking all these circumstances into consideration, I would not recommend the infliction of capital punishment, but as it is necessary that the punishment in a mitigated form should be such, as will act as an example to restrain others, I would recommend that the prisoner No. 1, Mangjakam, be imprisoned, with labor in irons, for fourteen (14) years, and that the prisoner No. 2, Manga, and No. 3, Sheolall, be imprisoned, with labor in irons, each for one (1) year."

Remarks by the Nizamut Adawlut.—(Present: Messrs. J. R. Golvin and A. J. M. Mills.)—"The prisoners are Kookees, a wild, savage race, and have only settled in the British territory within the last three or four years; they acknowledge their guilt, pleading their obligation to revenge a murder, and their ignorance of our laws as an excuse for the crime.

"Though ignorance of the law cannot be allowed to excuse the prisoners altogether from its penalties, yet with advertence to the short period of their residence in our territory, and to the circumstance of the colony never having been visited by a European officer, it certainly claims much weight in their favor in so peculiar a case as the present. It appears also that to revenge a murder is with the Kookees a sacred and honorable deed, and the provocation, which the prisoners received in this instance, was of the gravest kind,* the head of their clan having been killed under circumstances which must to them have borne the character of a wanton murder, and their chieftain, when dying, having called upon his clan to retaliate his death. Upon consideration of the above circumstances, we agree with the local authorities in the propriety of passing a mitigated sentence, and are of opinion that that proposed by the joint magistrate, Lieut. Vincent, is amply sufficient to satisfy the ends of justice in this case.

"That officer has more experience than any other of the habits and circumstances of these uncivilized tribes, and we therefore adopt the scale of punishment recommended by him as appropriate, striking out only the penalty of confinement in irons.

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"We convict the prisoner No. 1 of the murder, and prisoners Nos. 2 and 3, of being accomplices in the same, and sentence the former to five (5) years' imprisonment, and Nos. 2 and 3, to one (1) year's imprisonment each, all with labor, but without irons.

"We remark, for the information of the magistrate and the deputy commissioner, that the conviction of the prisoners Nos. 2 and 3, of being accomplices *before the fact*, is incorrect. These are accessories before the fact, but accomplices are those who are present *at the fact*."

PRESENT:

SIR R. BARLOW, BART., *Judge*.

GOVERNMENT

versus

PRANBULLUB DEB.

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Case of
PRANBULLUB
DEB.

The conviction and sentence of the prisoner for privy to forgery and fraud affirmed on appeal.

CRIME CHARGED.—1st, forgery of a *khurch-chittee*, and knowingly, fraudulently obtaining thereon and receiving Company's rupees 351, from the collector's treasury; 2nd, knowingly issuing the forged paper described in the 1st count; 3rd, fraud; 4th, privy to the above crimes; 5th, aiding and abetting in the above crimes.

CRIME ESTABLISHED.—Privy to forgery and fraud.

Committing Officer, Mr. W. B. Buckle, magistrate of Sylhet.

Tried before Mr. F. Skipwith, sessions judge of Sylhet, on the 13th July 1852.

Remarks by the sessions judge.—"The prisoner admits that he received the forged document from Bustub Churn for record, and he gave it to Roopnarain, from whom he again took it and prepared the *maskabar* from it, and it is impossible, looking at the document, that he could have done either of these acts without immediately becoming aware of the forgery.

"The jury acquit the prisoner, for want of evidence, but his own admission is conclusive against him as to his privy to the forgery, and I therefore dissent from their verdict, and convict the prisoner of privy to the forgery and fraud.

"The case against this prisoner was not well prepared. His admission of the receipt of the warrant in the lower courts ought to have been put in evidence against him and proved, or else the possession of the paper by him should have been clearly established.

● "The full particulars of the case are recorded in the Abstract of Prisoners Acquitted."

Sentence passed by the lower court.—To be imprisoned, without irons, for three (3) years, and to pay a fine of rupees one hundred (100), on or before the 27th July 1852, or in default of payment, to labor until the fine be paid, or the term of his sentence expire.

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Remarks by the Nizamut Adawlut.—(Present: Sir R. Barlow, Bart.)—"The prisoner saw this forged deed twice as he admits himself, the last occasion was on his making up the *maskabar*. Dates of month and years, amounts, all are palpably altered both in Bengalee as well as English. It is impossible that the numerous erasures and the alteration of the total, rupees fifty-one (51), to rupees three hundred and fifty-one (351), should escape the eye of the most careless observer, yet the prisoner's duty was to make up the monthly accounts, and he pretends not to have seen the falsification of the treasury draft for rupees fifty-one (51) in the year 1851, January 7th, to rupees three hundred and fifty-one, (351) for the year 1852, January 17th.

"I confirm the sessions judge's sentence."

PRESENT:

W. B. JACKSON, Esq., Judge.

KAIM GOLDAR

versus

DOOLUB BOGHA (No. 1), BODOO BOGHA (No. 2), TORAB BOGHA (No. 3), AYMUDDEE (No. 4), SHADUCK BOGHA (No. 5), ASGUR BOGHA (No. 6), DYA GAZEE MAL (No. 7), SUMIRUDDEE (No. 8), SHURRIETOOLLAH (No. 9), BOYAR GAZEE (No. 10) AND ALABUDDY (No. 11).

CRIME CHARGED.—Nos. 1, 2, 3, 4, 5, 1st count, with the culpable homicide of Moonshee Goldar; *secondly*, with riotously assembling and assaulting and wounding severely Moonshee Goldar; *thirdly*, with aiding and abetting in the said crimes. Nos. 6, 7, 8, 9, 10 and 11, with aiding and abetting in the said crimes.

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CRIME ESTABLISHED.—Nos. 1, 2, 3, 4, 5, culpable homicide of Moonshee Goldar, and Nos. 6, 7, 8, 9, 10 and 11, aiding and abetting in the culpable homicide of Moonshee Goldar.

Committing Officer, Mr. H. S. Porter, deputy magistrate of Noacolly, zillah Tipperah, with full powers of a magistrate.

Tried before Mr. H. C. Metcalfe, sessions judge of Tipperah, on the 22nd July 1852.

The conviction and sentence of the prisoners for culpable homicide affirmed in appeal.

Remarks by the sessions judge.—"The prisoners were charged with the culpable homicide of Moonshee Goldar, under the following circumstances:

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"Alee Mahomed (witness No. 2) and one Dengo were joint proprietors of a homestead. The latter absconded and Alee Mahomed received Munder, (witness No. 1,) into his former partner's rights and interests in the property. These were, however, claimed by the prisoner Bodoo Bogha as his by purchase, and from the witness Munder's refusal to recognize the asserted sale and to give up possession, arose a degree of ill-feeling between the parties, which led in the first instance to an assault upon Munder, and subsequently when the deceased Moonshee Goldar, his relation, interfered on his behalf, to so severe an assault upon him, that after lingering five days in a state of total insensibility Moonshee died.

"The prisoners pleaded 'not guilty'.

"The main evidence was furnished by seven eye-witnesses. It was consistent throughout, and although the crime was committed in October last, presented no material variations from the original deposition at the thanna, and before the magistrate. The names of some of the prisoners are omitted by some of the witnesses; but against all there is, in my opinion, sufficient proof for conviction.

"The prisoners Nos. 1 to 11, who are, with one exception, relatives, and consequently interested in Bodoo Bogha's claim to the property in dispute, the exception being prisoner No. 7, who is a *latteel* in Bodoo Bogha's service, proceeded about daybreak of the 22nd October to Alee Mahomed and Munder's house, and committed a severe assault on the latter's person. The deceased, Moonshee Goldar, hearing his relative's cries for help, hastened to his assistance, and the prisoners' violence became then directed against him. They assaulted him by Bodoo Bogha's (prisoner No. 2's.) orders, with such severity, using heavy *lattees* for the purpose, that he was left on the ground in a state of perfect insensibility from which he never roused, and in which he died on the fifth day following. The native doctor who examined the body is unfortunately absent on account of certified ill-health, but reference to his deposition before the magistrate shows that the skull was fractured and the brain evidently oppressed by an extravasation of blood consequent on the injury.

"The defence consisted of attempted *alibis* on the part of some of the prisoners only, which totally failed. There was also an insinuation made, through the medium of questions to the witnesses for the prosecution, that the deceased met his death in consequence of an illicit connexion with the sister of the witnesses, Tookanee and Nuzoo (Nos. 4 and 5,) but this appears to be utterly groundless.

"The assessors, with whose assistance I tried the case, found the prisoners Nos. 1 to 5 guilty on the 1st count of the indictment, and the prisoners Nos. 6 to 11, guilty on the 3rd count.

"In this finding I concur, the first five prisoners having taken an active and prominent share in the violence which caused Moonshee's death. There was no premeditation and no previous enmity towards the deceased, but the violence used towards him, because he naturally interfered to assist his relation Munder, was extreme and uncalled for. I sentenced them as shown in column '12.'"

Sentence passed by the lower court.—Nos. 1, 2, 3, 4, 5, each to seven (7) years' imprisonment, with labor and irons, and Nos. 6, 7, 8, 9, 10, 11, each to five (5) years' imprisonment, with labor and irons.

Remarks by the Nizamut Adawlut.—(Present: Mr. W. B. Jackson).—"It is proved against all the prisoners that they took an active part in a brutal and illegal assault on the witness Munder and on the deceased Moonshee Goldar, which occasioned the death of Goldar; the principle and most active offenders have been sentenced to seven (7) years' imprisonment, and the rest to five (5) years' imprisonment. I see no reason to interfere."

PRESENT:

SIR R. BARLOW, BART., *Judge.*

RAMTUNNOO FOTADAR

versus

LUCKHOO GOWALA (No. 1), SOOFUL CHYE (No. 2), KHOODEE MULLAH (No. 3), RAJROOP GENDAREE (No. 4), LOUTOO (No. 5), LUTCHMUN (No. 6), SEEWUN (No. 7) AND RAJCOOMAR (No. 8).

CRIME CHARGED.—Prisoners Nos. 1, 3, 5, 6, and 7, 1st count, theft with violence of property to the value of rupees eighty-five; 2nd count, accessaries before the fact; 3rd count, accessaries after the fact; 4th count, receiving and possessing stolen property knowing at the time of receiving it that it had been obtained by theft. Prisoners Nos. 2 and 4, 1st count, theft with violence, of property to the value of rupees eighty-five; 2nd count, accessaries before the fact; 3rd count, accessaries after the fact. Prisoner No. 8, 1st count, accessory after the fact; 2nd count, knowingly receiving and possessing stolen property, knowing at the time of receiving it, that it had been obtained by theft with violence on the night of the 19th April 1852.

CRIME ESTABLISHED.—Prisoners Nos. 1, 2, 3 and 4, 1st count, theft with violence of property to the value of rupees eighty-five. Nos. 5, 6 and 7, 4th count, receiving and possessing stolen property, knowing at the time of receiving it that it

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One prisoner acquitted. The sentences passed by the sessions judge upon the others mitigated by the Nizamut Adawlut.

Care should be taken to exhibit at one view in the calendar the property numbered and the names of the witnesses before whom the said property was produced from the houses or possession of each prisoner.

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had been obtained by theft. No. 8, 2nd count, knowingly receiving and possessing stolen property knowing at the time of receiving it, that it had been obtained by theft with violence.

Committing Officer, Mr. R. O. Heywood, officiating magistrate of Bhagulpore.

Tried before Mr. R. N. Farquharson, sessions judge of Bhagulpore, on the 18th June 1852.

Remarks by the sessions judge.—“Prisoners all plead ‘not guilty.’

“The following is a short history of this case:—On the night of the 19th of April last, Shibnaram, (witness No. 24,) own brother of prosecutor, and Thakoorchand, No. 25, his nephew, were sleeping in and about prosecutor’s house in the bazar of Ruttungunge. Prosecutor was at the time absent at Kosee, six miles from his own home. About midnight Thakoorchand, sleeping inside the house, was roused by a younger brother, who was sleeping in the same room, calling out *chor ! chor !* He, (Thakoorchand,) went outside and was immediately struck down by a lattee. Shibnaram, who was sleeping outside the *thakoorbaree*, being awoke by the noise in the house, ran to see what was the matter, but was struck down on the threshold by lattee blows on the shoulder and arm, and remained unconscious till he was carried into the house after the thieves had made off with the booty. There is some discrepancy in the evidence of No. 25, as to his state after being struck down and his recognizing some of the thieves. I feel convinced, however, that none of the thieves was recognized by either witness. Konyah, the chowkeedar of the *mohulla*, (witness No. 19,) states, that when on his usual beat on the night in question, he heard a noise proceeding from prosecutor’s house and knew it must be that of thieves ; that he told this to several people of the *mohulla* and endeavoured to persuade them to go with him to the rescue, but as the cholera was then raging, all refused to accompany him. Being afraid to face the thieves alone, he waited till they had decamped, and then going in, found Thakoorchand and Shibnaram on the ground as they had been struck down ; these then told him of the theft and violence—the next morning he saw the broken boxes, &c. The house was not entered burglariously, being merely protected by loose unfastened *jhamps*. These facts being communicated to the darogah, he immediately commenced inquiry as to the probable perpetrators of the crime, and having learnt from one Dhoomun of Boodoochuck, on the Ganges, (witness No. 23,) that he had observed a party of men frequenting two *dinghees* and going up and down the river at night without any ostensible purpose, he proceeded to track them as he thought up the Kosee river. While on this pursuit, he heard from the jemadar of the Sookteea Bazar pharee, that some Ghazeepore Binds, living at

Sookteea Bazar, had been watched and apprehended under suspicious circumstances. On this he immediately returned to the spot, and found that Lungroo chowkeedar, (witness No. 1,) of the beat in which the prisoners all reside, finding that some of them were absent from their houses, at suspicious times of night, immediately gave notice to the jemadar, who sent burkundaues and intercepted three of the gang returning to their homes at early dawn. One of these, Rajroop, (prisoner No. 4,) was apprehended, the other two ran off and escaped. Rajroop confessed to the theft in Ramtunnoo's house, naming those of his companions concerned with him in the robbery—this was on the 25th of April. On the following day prisoners Nos. 1, 2, 3, 5, 6 and 7 were apprehended. Nos. 1, 2, 3 and 4, including Rajroop, confessed both in the Mofussil and before the magistrate, with reservation, however, as to the violence. Nos. 5, 6 and 7, a father and two sons, live together in the same house where the greater portion of the stolen property was found, together with several other suspicious articles, *viz.*, a large skeleton key, applicable to the mahajunnee locks in common use, a fresh and serviceable box of lucifer matches and a pair of goldsmith's scales. Nos. 1 and 3 had also stolen property concealed in their houses. Prisoner No. 8 was not arrested till the 6th of May. The darogah, it seems, had reason to suspect him of being connected with the gang, and reporting his suspicions to the magistrate, received orders to search his house. Articles of dress, sworn to by prosecutor and two witnesses, Nos. 24 and 25, and entered in the list of property furnished to the darogah on the 21st of April, were found locked up in a box in his house, also a pair of *kurras* or ankle rings evidently newly-cast. One of these rings is of pure silver, the other of *roopa*, or alloyed silver. The latter is of such rough, cracked and imperfect manufacture, that it could never have been received from the silversmith as an article of use or ornament. Prosecutor suspects these *kurras* to have been made from the ornaments stolen from him, but of course this is not susceptible of proof.

"Prisoners Nos. 1, 2, 3, and 4 repudiate their former confessions: they say the Mofussil one was extorted by blows and ill-usage, and that the foudaree one followed as a matter of course. They have no witnesses in support of either of these allegations. Nos. 5, 6 and 7 deny all knowledge of the crime, and state that the property found on their premises is their own. Many witnesses to these facts and to prisoners' characters were examined, but some deny all knowledge of them or their affairs, and others depose to the prisoners being *muhz budmush*—not one speaks to their good character.

"Prisoner No. 8 denies all knowledge of the crime—claims the property found in his box as his own, and brings a number of witnesses to prove this and his good character; the testimony of

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all of whom is in his favor, but the manner of the witnesses before the court, and the general nature of their statements satisfying me that their evidence was collusive, I have given preference to the evidence of prosecutor, which, though scant in comparison with that adduced by Rajcoomar, bears, in my opinion, a greater impress of truth and probability.

"The jury find Nos. 1, 2, 3 and 4, guilty of the theft, but acquit them of violence. Nos. 5, 6 and 7, guilty of being accessaries after the fact and receiving stolen goods, knowing them to have been stolen. No. 8 they acquit entirely.

"I differ from the jury in their finding as to Nos. 1, 2, 3 and 4, inasmuch as their confession to having participated in the theft renders them responsible for all its consequences. There is no doubt but that violence was committed; I therefore find them guilty of the first count of the indictment in full, and sentence them accordingly to be imprisoned, with labor and irons, for ten (10) years. Nos. 5, 6 and 7 are not proved to have been accessaries after the fact, but are fully convicted on the 4th count. No. 8 is also, in my opinion, guilty of the 2nd count charged against him: his crime being tantamount to that of Nos. 5, 6 and 7. I therefore sentence them, Nos. 5, 6, 7 and 8, to six (6) years' imprisonment, with labor and irons.

"It should be explained that the Ghazeepore Binds, several times mentioned in this case, came to live in Sookteea Bazar in January last, since when the neighbourhood has been kept in constant alarm of thefts and burglaries. These Binds are notorious thieves, and it is more than suspected that Rajcoomar Bhugut, also a Ghazeepore man, sent for them to carry on their nefarious trade under his auspices. Their houses were immediately at the back of his, and one of the witnesses, (No. 7,) states, that on the first arrival of these Binds, Rajcoomar went with some of them to the *moktoo* or headman, to induce him to give them houses in the village. Since the apprehension of these prisoners there has not been a single case of theft or violence in the neighbourhood, and I am in hopes that the breaking up of this gang may have a general beneficial effect on the district.

"I have directed the magistrate to make good the amount value of unrecovered stolen articles from the property of the prisoners, under Act XVI. of 1850; the silver anklets will be restored to prisoner No. 8. I have also directed rewards of rupees ten (10) each to be given to Hurree Singh, a peadah of a private individual, who arrested prisoner No. 2 in the Teentungadeera jungle, and Lungroo, chowkeedar, by whose watchfulness the first culprit was apprehended."

Remarks by the Nizamut Adawlut.—(Present: Sir R. Barlow, Bart.)—"The prisoners in this case are charged with theft and violence; the two witnesses Thakoorchand and Shibnarain are said to have been assaulted.

"Thakoorchand stated before the magistrate that he recognized the prisoners but could not name them. In the first count he said five or six men came and beat him, he was senseless, but recognized Nos. 1, 3 and 5; he knew them for one year previously. Before the police, he said, it was a dark night and he could not recognize the thieves and suspected no one. Setting aside the recognition of prisoners Nos. 1, 3 and 5, who, the witnesses in the case state, only came to Sookteea from Ghazeepore some three or four months previous to the theft, the discrepancies and the evidence of this witness on the point of recognition, deprive it of all credit.

"Shibnarain, who was also beaten, deposes, that the night was dark and he could not recognize any one.

"The nature of the ill-treatment alleged to have been received by the above witnesses is proved by the darogah's first report early in the morning of the 21st April, in which he states *the assault was trifling*.

"The evidence to recognition cannot be relied on, and the *violence* is an exaggerated story.

"There has been a want of care and arrangement in producing the evidence to establish the fact of the finding of the property, which is calculated to throw considerable doubt on the guilt of the prisoners. In order to facilitate reference and to expedite the completion of a trial, great care should be taken to exhibit at one view in *the calendar* the property *numbered* and the names of the witnesses before whom the said property was produced from the houses or possession of each prisoner. In this case that precaution is omitted—possession of property of the same description, if *not numbered*, cannot be proved against the party charged with possession.

"Khedoo Bhuggut and Pundole Bhuggut saw the property produced from the houses of prisoners Nos. 1 and 3, also from house of prisoners Nos. 5, 6 and 7, a father and two sons. Pundole before the magistrate deposed that the prosecutor recognized it; in the sessions court he deposed that neither prosecutor nor the prisoners said anything at the time.

"Mohun Bhuggut, Puttun and Ram Jewun swore to the production of property from prisoner No. 8, which the prosecutor recognized, but Mohun could not swear to it before the magistrate.

"Nuncoo swore to the production of the property of prosecutor from the house of No. 1.

"Abdool Ahmed, jemadar, deposed to the production of property from the houses of prisoners Nos. 1 and 3, and No. 8; the silver ornament, found on the last prisoner, was newly-made, of course could not be recognized: prosecutor suspected it was made out of the silver ornaments he had lost.

"The jemadar further states that some property was also found on the prisoners Nos. 5, 6 and 7, but it was not capable

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of recognition ; other witnesses however recognized it. All the above prisoners claim the property as their own, but are unable to establish the fact. The witnesses they have examined in their defence in some instances deny all knowledge of the parties who cited them, others depose to their being bad characters.

"Prisoners Nos. 1, 2, 3 and 4 confessed before the police and before the magistrate, but their confessions have not been attested properly by the witnesses ; two chupprassees in the foudaree court, who depose merely that four men confessed before the magistrate whom they cannot now recognize ; the criminality admitted in their confessions varies in degree ; each prisoner ought, therefore, to have been identified with his confession, not only in order to determine the quantum of punishment which it might be proper to award to each individual, but also to establish that the confession attested by the witnesses was made by the individual whose name it bears.

"All these confessions, however, go to the extent of admitting that the prisoners were on or near the spot while others entered the house and then broke open the boxes and carried off the property. The prisoners themselves in the sessions court state that they were intimidated by the police, and they are ignorant of what was taken down in the foudaree as their answers to the charges preferred.

"Upon the whole the evidence and the circumstances of the case justify the conviction of these prisoners of aiding and abetting the theft but *without* violence as charged, they are sentenced each to (3) three years' imprisonment, with irons and labor.

"The prisoner No. 5, Loutoo, and his two sons Nos. 6 and 7, Lutchmun and Seewun are convicted of receipt of stolen property knowing it to be such, and sentenced each to two (2) years' imprisonment, with irons and labor. Prisoner No. 8 appears by the account given of him in the Statement No. 6 to be a man of suspicious character, but his connexion with the prisoners in this case is not satisfactorily proved. Mehtee Mehtoo, to whom Hossein Alee, burkundauz, says the prisoners applied for their accommodations, has not been examined. The prisoner is, as appears from the number of witnesses he has cited and the nature of their evidence, a man of some influence. The zurgur, who made the bracelets produced from the prisoner's house, swore to their being his manufacture ; the prosecutor suspected that his silver ornaments had been broken up for that purpose. A *chudder*, also produced from the prisoner's house, was sworn to by another witness as having been sold to the prisoner by him. Other witnesses have recognized the property found on the prisoner as belonging to him.

"The prisoner is entitled to the benefit of this evidence ; he is acquitted and will be immediately released."

PRESENT :

A. J. M. MILLS, Esq., *Officiating Judge.*

DOOLAL DASS

versus

GUNNESH MUNDUL (No. 13, APPELLANT), NOBOO DASS (No. 11), BHUJOHURÉE BOTAL (No. 12) AND RAJOO GYEN (No. 14).

CRIME CHARGED.—With having committed a dacoity in the house of the prosecutor and plundered therefrom property to the value of Company's rupees 68-11-0; 2dly, with aiding and abetting in the above dacoity; 3rdly, with knowingly having in their possession property acquired by that dacoity.

CRIME ESTABLISHED.—1st, dacoity; 2nd, aiding and abetting in it, and 3rd, knowingly having plundered property in their possession.

Committing Officer, Mr. V. H. Schalch, magistrate of Midnapore.

Tried before Mr. W. Luke, sessions judge of Midnapore, on the 6th July 1852.

Remarks by the sessions judge.—“On the 25th May the house of the prosecutor was attacked by a gang of dacoits, and robbed of property to the value of Company's rupees 68-11-0. The day following the prisoner No. 11 was arrested, with some property in his possession. He admitted that he with others, whose names he mentioned, had robbed the prosecutor's house, and that the articles found on him were part of those stolen. The prisoners Nos. 12, 13, 14 and 15, on the deposition of this man, were then arrested, and they also confessed to the robbery and gave up some property, which the prosecutor identified as his. The prisoners Nos. 11, 12, 13 and 14 repeated their confessions before the magistrate. In this court they all plead ‘not guilty.’ There are some discrepancies in the prisoners' confessions, which would render their truth somewhat questionable had they not been corroborated by other indisputable evidence. The prisoners do not deny that the property was found in their possession and that they produced it when required to do so by the darogah, but plead in defence that it is their own, of which they can give no proof. The probabilities are strongly against its truth, as the evidence even on behalf of the prisoners shows that their characters are suspicious and their means of livelihood precarious and uncertain. On a careful consideration of the circumstances, I am of opinion that they are guilty of the charges preferred against them, and I accordingly sentenced them to seven (7) years' imprisonment, with labor in irons, and to pay a fine, under

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Case of
GUNNESH
MUNDUL and
others.

The prisoner's plea in appeal differed from his defence and his guilt was otherwise established.

1852. Act XVI. of 1850, of Company's rupees 42-12-6, the amount
 September 3. value of the stolen property still unrecovered.”
 Case of Remarks by the Nizamut Adawlut.—(Present: Mr. A. J. M.
 GUNNESH Mills.)—“The prisoner Gunnesh Mundul has appealed. His
 MUNDEL and plea is that the prosecutor bore him enmity; that the prisoner
 others. Noboo came to his house the night before the dacoity and asked
 him to accompany him to his master's, the prosecutor's house,
 and that, knowing Noboo to be a man of bad character, he
 refused to go with him; but it is worthless and inconsistent with
 his defence. The guilt of the prisoner is clearly established.
 I convict the prisoner of dacoity, and confirm the sentence
 passed on him.”

PRESENT :

A. J. M. MILLS, Esq., *Officiating Judge.*

MUSST. TOONIA, DAUGHTER OF JEWRAKHAN JOLAHIN,
 AND GOVERNMENT

versus

DHOOPAREE.

1852. CRIME CHARGED.—Wilful murder of Musst. Ashooria, a
 September 3. child, three months old, daughter of Musst. Toonia, prosecutrix,
 by administering opium.

Case of Committing Officer, Mr. W. T. Tucker, officiating magistrate
 DHOOPAREE. of Patna.

The prison- Tried before Mr. G. Gough, commissioner, with powers of a
 er, although sessions judge, zillah Patna, on the 21st August 1852.

convicted of murder, was sentenced to imprisonment for life in the zillah jail, on account of the doubtful state of his mind.
 Remarks by the commissioner.—“The following are the particulars of this case:—The prosecutrix and the prisoner are neighbours, living in adjoining houses, and it appears, that some ten days prior to the event, which has led to this trial, a quarrel occurred between them, in regard to some eggs. On the 29th December last, the prosecutrix left her infant asleep in the verandah of her house, and went to bathe. When she returned and was drying her hair, the prisoner came and approached the child, who immediately began to cry, and on the mother inquiring what was the matter, the prisoner said he had given it a little opium, the mother then went to the child and found some opium on the mouth and tongue, which she removed, and immediately gave the alarm that opium had been given to her child, on which the prisoner fled, and when the neighbours came, the child had become senseless and died that night. The statement of the prosecutrix is to this effect, and is corroborated by the evidence of Jaffir Alee, and Jita, witnesses in the case.

"The prisoner was subsequently apprehended, and the body of the child sent in to the sudder station for examination by the civil surgeon, who found opium in the stomach more than sufficient to cause death.

"The prisoner confessed before the Mofussil police and the magistrate, that he had given a little opium to the child to quiet it when it was crying; these confessions were proved on trial before me, but the prisoner on this latter occasion denied the charge.

"There can be no doubt whatever as to the prisoner having given opium to the child, and that its death was thereby occasioned, but some doubt may be entertained as to whether he was in his right senses when he committed the crime. It would appear that the man is naturally of weak intellect, and that he is subject to temporary insanity. The witnesses say he was sane when he gave the child opium, but admit that he evinced symptoms of insanity whenever he drank. When the civil surgeon, Dr. Dicken, was examined by the magistrate on the 14th January last, he then was of opinion that the prisoner was sane, and though apparently of weak intellect, capable of distinguishing right from wrong; subsequently, however, the prisoner evinced symptoms of mental aberration, and came under Dr. Dicken's treatment, and that officer now gives his opinion that the prisoner may be subject to temporary insanity, and considers him an unsafe person to be at large.

"There is no evidence whatever to prove that the prisoner was insane when he administered opium to the child. On the contrary, the witnesses declare he was then in his right senses, and under all the circumstances of the case, and so far as my own observation warrants, I think he must be held responsible for his acts.

"The law officer convicts the prisoner of culpable homicide, and I would recommend, that he be sentenced to imprisonment, with labor and irons, for life."

Remarks by the Nizamut Adawlut.—(Present: Mr. A. J. M. Mills).—"The prisoner is clearly guilty of murder. The only assignable motive for committing the crime, is that a quarrel had occurred between the prosecutrix and the prisoner in regard to some eggs about ten days previous, but this seems quite an insufficient cause, and of itself raises a suspicion as to his sanity. The evidence goes to show that the prisoner is a person of weak intellect and is subject to temporary insanity. Looking to these facts, I think doubt may reasonably be entertained as to whether the prisoner was of sound mind when he administered the opium to the poor child; and that the justice of the case will be therefore satisfied by a mitigated sentence. I sentence the prisoner to imprisonment for life in the zillah jail, where he can be looked after, and be readily removed to the insane hospital should he again at any time evince symptoms of insanity."

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Case of
DHOOPAREE.

PRESENT :

R. H. MYTTON, Esq., *Officiating Judge.*

BYDNATH BISWAS

*versus*GOSSAIN DOSS GHOSE (No. 1) AND KASSEENATH
NUNDY (No. 2).

1852.

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Case of
GOSSAIN DOSS
GHOSE and
another.

Sentence of
seven years'
imprisonment
for dacoity
confirmed on
appeal.

CRIME CHARGED.—1st, dacoity in the prosecutor's house and plunder of property to the amount of rupees 4,363-4-0; 2nd, being accomplices in dacoity; 3rd, receiving portions of the above property knowing it to have been plundered.

CRIME ESTABLISHED.—Being accomplices in dacoity.

Committing Officer, Mr. E. A. Samuells, magistrate of the 24-Pergunnahs.

Tried before Mr. W. J. H. Money, sessions judge of the 24-Pergunnahs, on the 4th June 1852.

Remarks by the sessions judge.—“The prosecutor deposed to the fact of his house being attacked by twelve or fourteen dacoits about two hours after midnight of the 15th Phagoon last, some of whom had *tulwars*, *lattees*, and *mussals*, and to their plundering his property, consisting of gold and silver ornaments, clothes and cash, amounting to about rupees 4,300. The prisoners denied the charges on which they were arraigned both in this court and before the magistrate. In the Mofussil they admitted their being accomplices in the dacoity. Witness No. 1, Siltaram Chuckerbutty, and witness No. 2, Kylasnath Bundopadhia, who have been admitted approvers, deposed to the fact of the prisoners proceeding from Chandpal Ghaut, in company with others, and attacking the prosecutor's house, and plundering the property, the prisoner Kasseenath taking the cloth No. 3, and Gossain Doss the silver ornament No. 4. Witness No. 17, Madhubchunder Dutt, was the informer, at whose instance the prisoners were in the first instance apprehended, the witness having some suspicions in consequence of their asking him whether he would purchase any property which they admitted they had obtained in the dacoity at the place where the prosecutor's house was situated. Witnesses deposed to the production of part of the plundered property from the possession of the prisoners, which was recognized as belonging to the females in the prosecutor's family. Prisoner No. 1, Gossain Doss, complained of ill-treatment, declared he had a quarrel with witness No. 17, Madhubchunder Dutt, and cited witnesses to prove his good character and identified the cloths Nos. 1 and 2, as his own. Prisoner No. 2, Kasseenath Nundy, complained to the same purport and cited witnesses to prove his sickness and an *alibi*. Nothing was elicited in favor of the prisoners, who

were convicted of being accomplices in dacoity and sentenced to imprisonment."

Sentence passed by the lower court.—To be imprisoned for the period of seven (7) years, with labour in irons.

Remarks by the Nizamut Adawlut.—(Present: Mr. R. H. Mytton).—"The prisoners appeal, asserting that the informer, Madhubchunder Dutt, owed them a grudge. They made very circumstantial confessions to the police, and the proof of their guilt is very complete. The appeal is therefore rejected."

PRESENT:

W. B. JACKSON, Esq., *Judge*.

R. H. MYTTON, Esq., *Officiating Judge*.

GOVERNMENT

versus

HAFIZ DHALEE.

CRIME CHARGED.—Wilful murder of Dolian Bebee, the sister of the prosecutor Erasutoollah.

Committing Officer, Mr. H. Rose, joint magistrate of Khoolna, zillah Jessore.

Tried before Mr. R. M. Skinner, sessions judge of Jessore, on the 25th August 1852.

Remarks by the sessions judge.—"The brother of the deceased, on 21st July, deposed before the darogah of Noabad, that he had heard that his sister Dolian had been murdered by her husband, the prisoner, sixteen days before, as she did not wish to live with him, owing to his improper intercourse with his brother's wife.

"The prisoner was apprehended and confessed both before the police and before the joint magistrate, that he had, on the night of 5th July, first slapped her face and then throttled her, and afterwards thrown her corpse into the river. He was angry with her for not heeding what he said, for gadding out at night, and for bad practices.

"The prisoner's brother, Zakir, who lives in the same house with him, testifies that in the middle of that night his brother informed him of the deed; and he called in two neighbours, Nyandy and Deautoolla, who depose to having accompanied him, and, by the light of a *cheragh*, seen the corpse in the same room with Hafiz, who acknowledged what he had done. The next day they heard from him that he had thrown the corpse into the river Bhirup.

"Two other witnesses, Jan Mahomed and Surroop Mullick, give evidence that, as they were coming home that night, they

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Case of
GOSAIN Doss
GHOSH and
another.

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September 4.

Case of
HAFIZ DHA-
LEE.

Sentence of death passed in a case of wilful murder, although the corpse was not found by the police; the prisoner's confessions and the evidence of witnesses being conclusive as to the death of the victim and her body having been seen by witnesses.

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 LEE.

met the prisoner in a boat ; and next day, on being questioned by them, he admitted that he had murdered his wife and disposed of the body as above. The above witnesses profess to have informed the chowkeedar, who was ill.

"There is no proof of infidelity of the deceased. She is only proved to have been in the habit of frequenting her mother's house.

"The confessions before the police and the joint magistrate, are duly attested. No premeditation is proved. The body has not been found.

"The jury convict Hafiz Dhalee of wilful murder.

"I consider the said crime proved, and that imprisonment, in transportation, would be a proper punishment under the circumstances."

Remarks by the Nizamut Adawlut.—(Present : Messrs. Jackson and Mytton).—MR. JACKSON.—"It is proved by the prisoner's repeated confessions to his neighbours, to the thanna mohurir and to the joint magistrate, that he strangled his wife because she was in the habit of running away to her mother's, and would not attend to his orders ; and that he then carried away the body and threw it into the river. The body is not forthcoming, but several witnesses saw it lying in prisoner's house with the tongue hanging out, on its back, just after the prisoner had told them he had killed her. The prisoner before the sessions court denied the charge and said his wife had gone away, and he did not know where. I convict the prisoner Hafiz of the murder of his wife, and would sentence him to suffer death."

MR. MYTTON.—"There are no circumstances in this case in favor of the prisoner. His assertion of the infidelity of deceased is, according to his own statements, founded on mere suspicion. He could not even name her supposed paramour. The corpse has not been found, but the voluntary confessions of the prisoner and the evidence of the witnesses are conclusive as to her death. I therefore concur with Mr. Jackson. Sentence of death will accordingly issue."

PRESENT :

A. J. M. MILLS, Esq., *Officiating Judge.*

GOVERNMENT

versus

NOORA SHEIKH.

CRIME CHARGED.—With having, on the night of the 19th May 1852, corresponding with the 7th Jeyt 1259, committed a burglary in the house of the prosecutor and stolen therefrom property valued at Company's rupees 7-14-0; and on a 2nd count, with having in his possession property acquired by the said burglary, knowing it to have been so obtained.

CRIME ESTABLISHED.—Burglary.

Committing Officer, Mr. R. H. Russell, officiating joint magistrate of Bograh.

Tried before Mr. T. Wyatt, sessions judge of Rungpore, on the 22nd July 1852.

Remarks by the sessions judge.—“ From the statement of the prosecutor (whose house had been robbed) and the evidence adduced, it was proved that, on the night of the 19th May last, a burglarious entry, under ground, was made into the room of witness No. 1 (a brother of the prosecutor), who having been awoke by feeling the hand of the thief on his breast, jumped up and seized the prisoner with both his arms round the waist, when the prisoner let fall in the room some brazen vessels belonging to witness No. 1, which he had intended to have carried off, and having bitten witness in several places in both his arms, witness called to his two brothers, *viz.*, the prosecutor and witness No. 2 (sleeping in adjacent compartments) to go to the back of his room and lay hold of the prisoner, who had attempted to escape by the hole through which he had entered the room of witness No. 1; when the brothers having, as they had been told, seized the prisoner as he was coming out of the hole, bound him, when witness No. 1, getting a light, discovered him to be the prisoner, an immediate neighbour of theirs (prosecutor and witnesses Nos. 1 and 2), who confessed he had been assisted in the burglary by one Toofanoo. Neighbours were called to the spot the same night, who recognized the prisoner in the hands of the prosecutor, and witnesses Nos. 1 and 2, and saw the burglary that had been made. Complaint having been lodged, the next morning, at the thanna, the police jemadar proceeded to the prosecutor's, and held an inquiry, before whom the prisoner, on verbal interrogation, first denied the crime, but, the next day, confessed to its commission by him, and on search, some of the stolen property (items Nos. 1 and 2) produced at the trial,

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Case of
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SHEIKH.

The conviction and sentence passed upon the prisoner convicted of burglary, affirmed in appeal.

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were found hid in an adjacent jungle, identified as the prosecutor's. The Mofussil confession was proved to have been made with the free-will and accord of the prisoner. It was recorded in the foudjaree proceedings that the prisoner had once before been convicted and punished for theft in the district of Mymensing.

"In his defence the prisoner pleads that the charge is founded on the enmity of the prosecutor, consequent on his having asked him to repay four *coorees* of *dhan* he had lent him about three years before, when the prosecutor with his two brothers and another person came to his house on the night in question, seized and carried him to his (the prosecutor's) house, where he was charged with the burglary, which had been done by the prosecutor himself and the alleged stolen property placed before him.

"The evidence called by the prisoner availed him naught.

"The jury, by their oral verdict, found the prisoner guilty of the first count, in which I concurred, sentencing the prisoner, with reference to his having before been once convicted and punished for theft, to the measure of punishment awarded.

"The prisoner was committed for this burglary owing to having once before been punished for theft."

Sentence passed by the lower court.—Seven (7) years' imprisonment, with labor and irons.

Remarks by the Nizamut Adawlut.—(Present : Mr. A. J. M. Mills).—"The prisoner has appealed, urging the same worthless pleas as he did in his defence. He has been convicted on the fullest proof, and I confirm the conviction and sentence."

PRESENT :

SIR R. BARLOW, BART., *Judge*.

ROUSHUN SINGH, DHUJJOQ SINGH AND MUTTUB SINGH

versus

BRIJMOHUN SINGH.

CRIME CHARGED.—Riot attended with violent assault and wounding. 1852.

CRIME ESTABLISHED.—Riot attended with violent assault and wounding.

Committing Officer, Mr. F. Tucker, magistrate of Tirhoot.

Tried before the Honorable R. Forbes, sessions judge of Tirhoot, on the 9th June 1852.

Remarks by the sessions judge.—“The prisoner now indicted for being concerned in a ‘riot attended with violent assault and ‘wounding’, which occurred in March 1844, has till lately succeeded in eluding apprehension, and his being at length taken and brought to trial is very creditable to the exertions of Mr. Tucker, the present magistrate.

“This trial is in fact a continuation of trial No. 2, of prisoners punished without reference for May, and also ditto No. 2, ditto ditto for November 1844, and the following is a transcript of the former sessions judge’s report of the trial held in the former month:—‘The wounded individual deposes to receiving intelligence on the 10th of Cheyt, that the prisoner was engaged in cutting down the crops in his village of Moosapore; that he sent information to the thanna and himself proceeded to the spot, which reaching on the following morning, he found the prisoner, with two hundred men or more, engaged in removing the same; that he remonstrated with him, on which he replied that Mr. Samuells was now gone, what was there to fear, and attacking him with a sword, wounded him desperately, while others of the rioters by his orders simultaneously assaulted him, one with a *gundasa*, or battle-axe, the others with *lattees*. To the same effect is the evidence of the other two prosecutors, shareholders in the village, who were likewise severely beaten. They state that the lands of the prisoner adjoining theirs were last year sold, shortly after which he had plundered their crops, disregarding the boundary line laid down by the superintendent, Mr. Chapman, on which occasion he was fined rupees two hundred (200) by the magistrate. Their statement is borne out in every particular by the other witnesses. The wounds were of a very serious nature as yet evident, and duly attested by the medical man. The prisoner, it appears, is an old and apparently incorri-

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SINGH.

The prisoner was acquitted on appeal, the Nizamut Adawlut considering the evidence to his recognition at the commission 8 years ago, of the offence charged, insufficient.

1852. 'gible offender, having been convicted as shown by the proceedings
 September 10. 'appended to the record as stated in the margin. He has no
 'defence to make save the unsupported one of an *alibi*. I have,
 Case of 'therefore, in full concurrence with the verdict of my assessors,
 BRIJMOTUN 'sentenced him as the heinous nature of the offence seemed to
 SINGH. 'call for.'

"The prisoner having been named by the three persons now adduced as eye-witnesses for the prosecution on the first trial of the case in May 1844, on which occasion they deposed to seeing him among the rioters, and that he struck the prosecutor Roushun Singh with a *gundasa* on the head, has now been confronted with those witnesses examined afresh, and they unhesitatingly identify him as the 'Brijmohun Singh,' whom they before-named, deposing now as they had previously done in regard to the part taken by the prisoner in the riot.

"The report of the medical officer of the time in regard to 'the injury inflicted upon Roushun Singh and Dhujoo Singh, states, 'that the former has received a compound fracture of the right arm, an incised wound of the right hand, and a severe incised wound on the left shoulder of a dangerous nature. The latter 'has only the mark of a slight wound on the head.'

"The prisoner, pleading 'not guilty' both before the magistrate and in this court, urged in his defence that he had nothing to do with this case, and that he had not absconded; that the absconded 'Brijmohun Singh' was a servant of Surdha Singh's (convicted on the trial in May 1844,) who lived in the West country. Had he (prisoner,) really absconded, his property would have been sold, which it was not, and he (prisoner,) has all along been at his own house and carrying on his own business.

"The prisoner called five witnesses, of whom three stated that the absconded 'Brijmohun Singh' was a servant of 'Surdha Singh's', which they said they knew from not having seen the said 'Brijmohun Singh' since the riot. Two of them stated having heard from 'Miunore Singh' (convicted on the trial in December 1844,) that the absconded 'Brijmohun Singh' was a servant of Surdha Singh's, and all five deposed that the absconded 'Brijmohun Singh', who was a tall young man and dark color, spoke the dialect of the West, and that the prisoner had never absconded, but has all along been at his village transacting his own business.

"The prisoner in his answer, both before the magistrate and in this court, gave the name of his father 'Madhoa Singh,' and he has not pleaded in his defence, that he is the son of any other person; he stated himself to be by profession a zemindar and gave as his place of residence in the foudaree court mouza 'Hubraha' and in this court 'Burroah,' it appearing that these mouzas are so close to each other as to be called sometimes by one name, sometimes by the other.

"In their depositions given at the thanna on the 16th March 1844, a day after the riot, the wounded prosecutors 'Roushun Singh' and 'Dhujoo Singh' named Surdha Singh and Minnore Singh, (convicted,) Jeetoo Singh, (acquitted,) and 'Brijmohun Singh,' 'maliks' of Hatimpore, between whom and the proprietors of 'Moosapore' the boundary dispute existed, which led to the riot and this trial.

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"Again, in the magistrate's 'register of Absconded Persons for 'August 1844,' and in the usual 'Descriptive Roll' issued in that month and year with a view to the prisoner's apprehension, he is entered as 'Brijmohun Singh,' son of Madhoa Singh, residing at Hubraha and Burroah; this entry showing, as above remarked, that these places are so contiguous as to be considered as almost one and the same. Besides which, the description of the absconded 'Brijmohun Singh,' as entered in the 'Descriptive Roll,' corresponds in every respect with the person of the prisoner brought to trial.

"The law officer in his *futwa*, expressing himself fully satisfied with the identity of the prisoner, convicts him of the crime charged, and declares him liable to discretionary punishment by *tazeer*.

"I entirely concur with the *mooftee* in considering both the identity and guilt of the prisoner to be fully and satisfactorily established, and I would remark that nothing is more probable than the prisoner's defensive allegation and to which effect his witnesses have deposed of his never having absconded, but that he has all along been at his home and carrying on his business; as such cases of clandestine harbouring of offenders, particularly in this description of cases, by landholders (as the accused himself in this case is,) in collusion with the police, are of frequent occurrence.

"One discrepancy deserving of notice is observable in this case. The prosecutor 'Roushun Singh' deposed, as did the three eye-witnesses of the former and present trial, that the prisoner struck him (Roushun Singh) a blow with a *gundasa* on the head. The *Mofussil sooruthal* shows three wounds or marks on the head of Roushun Singh, 'apparently inflicted by a *gundasa*,' none of which is, however, described as severe, but the report of the medical officer, above quoted at length and verbatim, is silent as to any wound or injury being visible on the head of 'Roushun Singh.'

"Whether from inadvertence, from the injury being very slight, or from whatever cause this omission has occurred in the medical officer's report, I have deemed it just in passing sentence to give the prisoner the benefit of the circumstance. He has accordingly been sentenced to a lesser term of imprisonment by one (1) year than was awarded to the previously convicted

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SINGH.

'Minnore Singh,' proved to have inflicted an incised wound on the same prosecutor's hand with a sword, with however the same amount of fine in lieu of labor."

Sentence passed by the lower court.—To be imprisoned, without irons, for three (3) years, and to pay a fine of Company's rupees two hundred (200,) on or before the 1st July 1852, or, in default of payment, to labor.

Remarks by the Nizamut Adawlut.—(Present: Sir R. Barlow, Bart.)—"The result of this trial depends altogether upon the truth of the evidence as to the prisoner's recognition at the time of the assault on the prosecutors in March 1844.

"There is sufficient proof on the record as to the prisoner, being the *Brijmohun Singh*, son of Madhoa Singh, resident of Hubraha and Burroah, two contiguous villages considered almost one and the same, and the defence set up that Brijmohun Singh named in 1844 is another man of that name, a resident of Oudh, does not satisfactorily establish the plea.

"But there is not that clear and well-established proof on the record that Brijmohun, the prisoner, was present at the assault which would warrant a conviction. The prosecutors, in number three, never saw the prisoner before or since the day on which they were assaulted, *now eight years ago*.

"By the statements of the prosecutors it appears that Sirdar Singh, with some two hundred or two hundred and fifty men, cut the crops which were in dispute and were the cause of the assault. Amidst so large a number of assailants to recognize the prisoner *then only seen*, and that, too, after the lapse of so long a period, must be exceedingly difficult, and such a statement should be received with the greatest caution, while it should also be established by the clearest evidence.

"Of the three eye-witnesses in the calendar, the first never but once saw the prisoner, and that was at the time of the assault; another said he had seen the prisoner two or four times before the occurrence; the third, that he was in the habit of going to the village of Hubraha. This is weak and uncertain evidence upon which to declare the recognition of the prisoner in the midst of a large and tumultuous body of men, satisfactorily proved.

"The prisoner is acquitted and must be released."

PRESENT :

A. J. M. MILLS, Esq., *Officiating Judge.*

JOOTEE AHEER

versus

SHEIKH HOSSEIN BUKSH (No. 2), SHEIKH GUILEE (No. 3, APPELLANTS), SHEIKH DHONDA (No. 4) SHEIKH MEERUN (No. 5), WUZEER ALEE (No. 6), AND MANKEY DOSAD (No. 7).

CRIME CHARGED.—Wilful murder of Azrail Aheer, chowkeedar.

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CRIME ESTABLISHED.—Nos. 2, 3, 4, 5 and 6, culpable homicide of Azrail Aheer, and No. 7, aiding in the culpable homicide of Azrail Aheer.

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Committing Officer, Mr. R. J. Richardson, officiating magistrate of Sarun.

Case of SHEIKH HOSSEIN BUKSH (appellant) and others.

Tried before Mr. C. Garstin, sessions judge of Sarun, on the 17th June 1852.

The conviction and sentence affirmed.

Remarks by the sessions judge.—“ The facts of this case may be stated in a very few words :—Some cattle belonging to the prisoners had got into a field belonging to a person named Sungat Talee, about which words if not blows* passed between them, but all ended for the time in the cattle being taken home. Some little while after the chowkeedar ordered the deceased, who was a chowkeedar, to drive the cattle off to the thanna, and on his going to the prisoner's house to do this, they set upon and beat him so violently that he died of the injuries on the spot where he fell, only a little time afterwards. All the prisoners plead ‘ not guilty,’ but make no satisfactory defence. They say that some of their party were beaten by the zemindar's people, and they bring evidence to prove that a regular fight took place, but it is perfectly clear that the deceased met his death at their hands, and under these circumstances I have, in concurrence with the *futwa* of the moultvee, sentenced them as noted above, giving each person a punishment proportioned to the share taken by him in the assault.”

Sentence passed by the lower court.—Nos. 2 and 3, each to be imprisoned without irons for a period of four (4) years from 17th June 1852, and each to pay a fine of rupees thirty (30), on or before the 16th July next, or, in default of payment, to labor until the fine be paid, or the term of their sentence expire. Nos. 4, 5 and 6, each to be imprisoned without irons, for a period of three (3) years from 17th June 1852, and each to pay a fine of rupees twenty (20), on or before the 16th July next, or, in default of payment, to labor until the fine be paid or the term

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Case of
SHEIKH HOS-
SEIN BUKSH
(appellant)
and others.

of their sentence expire ; and No. 7 to be imprisoned for a period of two (2) years, from the 17th June 1852, and to pay a fine of rupees ten (10,) on or before the 16th July next, or, in default of payment, to labor until the fine be paid or the term of his sentence expire.

Remarks by the Nizamut Adawlut.—(Present : Mr. A. J. M. Mills).—" The prisoner Hossein Buksh and Shiekh Gullee have appealed. They plead enmity with the zemindars of the village, and allege that their house was attacked by the zemindar's people and the deceased was killed in the affray that ensued. Their witnesses speak to blows being exchanged on both sides, but I concur in the view of the case taken by the sessions judge ; the evidence clearly establishes the charge, and the prisoners have been justly convicted. The appeal is rejected."

PRESENT :

W. B. JACKSON, Esq., Judge.

BHOOBUN KURMOKAR

versus

NOBIN KURMOKAR (No. 5, APPELLANT), SHEIKH NEELMONEE (No. 1), SHEIKH MUDHOO (No. 2), SHEIKH SADHOO (No. 3) AND SHUMSHERE KHAN (No. 4).

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Case of
NOBIN KUR-
MOKAR (ap-
pellant) and
others.

The prisoner, (appellant,) was acquitted, the Nizamut Adawlut being dissatisfied with the evidence against him.

CRIME CHARGED.—1st count, Nos. 1, 3, 4 and 5, burglary on the premises of the prosecutor Bhoobun Kurmocar ; 2nd count, being accomplices to the above charge ; 3rd count, knowingly receiving and keeping property acquired by the said burglary, and No. 2, knowingly receiving and keeping property acquired by the said burglary.

CRIME ESTABLISHED.—Nos. 1, 2, 3, 4 and 5, knowingly receiving and keeping stolen property.

Committing Officer, Syed Zynooddeen Hossein, deputy magistrate of Manickgunge, zillah Dacca.

Tried before Mr. C. T. Davidson, sessions judge of Dacca, on the 19th July 1852.

Remarks by the sessions judge.—" The prisoners are charged with burglary and theft of property, valued at rupees 30-6-0 ; on a 2nd count, with being accomplices in the aforesaid crime ; and on a 3rd count, with receiving stolen property knowing the same to have been acquired by burglary. The prisoners Nos. 1, 2, 3 and 4 confess in the Mofussil, and in the magistrate's court, and these confessions have been duly attested before this court. The fact of the burglary having been committed on the prosecutor's house, the surrender by the prisoners of the stolen property,

and its being that of the prosecutor, have been proved by the evidence of the witnesses examined. The prisoners Nos. 1, 2, 3 and 4 deny the charge, and retract their confessions, but have set up no good defence, nor called any witnesses. The prisoner No. 5 denies likewise, and has called two witnesses to character, they are both his relations, but do not say anything in his favor. The *futwa* of the law officer convicts the prisoners of having in their possession stolen property, knowing the same to have been so acquired, and declares them liable to *tazeer*, in concurrence with which they have been sentenced as described in column 12 of the statement. The higher sentence passed upon the prisoner Mudhoo, No. 2, is in consequence of a former conviction of burglary in the foudaree court."

Sentence passed by the lower court.—On prisoners Nos. 1, 3, 4 and 5, each to be imprisoned for two (2) years with labor and irons, and No. 2, five (5) years' imprisonment, with labor in irons.

Remarks by the Nizamut Adawlut.—(Present: Mr. W. B. Jackson.)—"Against the prisoner Nobin Kurmoker there is nothing but the evidence of Hurrinath and Jhapra, witnesses, who swear that he produced from a place, some distance from his house, two pieces of a brass pot. I am not satisfied with the evidence, and think there is reason to believe that this part of the case was got up in order to criminate him. I acquit the prisoner Nobin Kurmoker, and direct his release."

PRESENT:

R. H. MYTTON, Esq., *Officiating Judge*.

GOOROODAS MUNDUL

versus

JOGISHUR MUNDUL (No. 1) AND NUBO COOMAR
KOOER (No. 2).

CRIME CHARGED.—Wilful murder of Sreenath Mundul, son of prosecutor.

CRIME ESTABLISHED.—Being accomplices in the culpable homicide of Sreenath Mundul.

Committing Officer, Mr. S. Wauchope, magistrate of Hooghly.

Tried before Mr. E. Bentall, additional sessions judge of Hooghly, on the 6th May 1852.

Remarks by the additional sessions judge.—"This case arose from a sudden dispute about the possession of a clump of bamboos and a bank of earth which had been thrown up to support the house of Chand Bagdee, who is a tenant of the prosecutor. Some of the prisoners were going to cut the bamboos and dig the

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Case of
NOBIN KUR-
MOKAR (ap-
pellant) and
others.

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Case of
JOGISHUR
MUNDUL and
another.

On conviction of culpable homicide, a sentence of seven years' imprisonment confirmed on appeal. Plea that prisoners were only charged with wilful murder, rejected.

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Case of
JOGISHUR
MONDUL and
another.

bank, and Chand told his landlord, who came to the spot with his son Sreenath, when a dispute took place, and Sreenath was killed on the spot with blows on the head. The medical officer who examined his body stated, that he had two lacerated wounds on his scalp, and that his skull was fractured, and that he also had a large bruise on the left fore-arm. Five witnesses state that they saw the prisoners Nos. 1, 2 and 3 take it in turn to strike Sreenath, but they have given their evidence so much by rote, and told their story so much in the same order, that I believe they have been taught what to say, and I have no confidence in what most of them state; moreover, Chand stated that the witnesses Nos. 2, 3 and 4 did not arrive until Sreenath was dead. The witness No. 3 went to the thauna with the chowkeedar, who there made a deposition, in which he accused the first three prisoners; he also carried a report from the gomashtha, but in that no names were written, and a petition of the prosecutor in which only the first three of the prisoners were accused. The dispute took place early in the day, but the news of it was not taken to the thauna until 9 p. m. The distance between the two places is about five *coss*. The prisoner No. 1 stated in his defence, that his house was attacked by the opposite party on the day before this dispute is said to have taken place, but no complaint of the circumstance was made to the police and his defence cannot be trusted. Nos. 2 and 3 (the case of the latter was referred) have endeavoured to prove *alibi*, but I see no reason for believing the evidence of their witnesses. No. 3 said, that on the 26th of December, he presented a petition to the judge at Hooghly, and accordingly I sent for the petition, which is dated the 26th December, and has the signature of the acting judge, but it was not registered on that day, although all other petitions are registered in the order in which they were presented. One petition was presented and registered on the 26th of December, but this petition was registered the last in the book, after the petitions for the 31st of December. There is no accounting for this anomaly, except by supposing that the date of the petition is a forgery and that it has been fraudulently entered in the book. The book was not signed until the 28th February 1852, the day on which the then supposed fraud was discovered, and an application for a copy of the petition to prove the *alibi* was not made until the 24th February, although it would have been natural to have made it soon after the prisoner was accused. I believe that there was an affray between two parties and that the prisoner was killed in it. I have given a severe punishment as the deceased received repeated blows."

Sentence passed by the lower court.—To be imprisoned, with labor for seven (7) years each.

Remarks by the Nizamut Adawlut.—(Present: Mr. R. H. Mytton.)—"This case has already been before the court on a reference regarding a prisoner Soormunt Mundul, which was disposed of on the 10th of July. The prisoners appeal in a long petition, pointing out discrepancies in evidence, and pleading that, as they were charged only with wilful murder, they could not be found guilty of culpable homicide, quoting a case at page 157 of the 1st volume of Nizamut Adawlut Reports.

"The evidence of witnesses Nos. 5 and 6, on which the sessions judge relies, is as previously noticed, conclusive as to the guilt of the prisoners. There is no impediment to conviction of culpable homicide on a charge of wilful murder, and there is no precedent in support of the prosecutor's plea at the page indicated.

"The appeal is rejected."

PRESENT:

W. B. JACKSON, Esq., *Judge*.

RAMKOOMAR SIRKAR

versus

SHEIKH ALLUM.

CRIME CHARGED.—1st count, burglariously entering the house of Ramkoomar Sircar, and stealing therefrom property valued at fifteen annas; 2nd count, with being an accomplice in the above-mentioned crime.

CRIME ESTABLISHED.—Burglariously entering the house of Ramkoomar Sircar.

Committing Officer, Mr. T. B. Mactier, joint magistrate of Furreedpore.

Tried before Mr. C. T. Davidson, sessions judge of Dacca, on the 12th July 1852.

Remarks by the sessions judge.—"The prisoner is charged with burglary and theft of property valued at fifteen annas, and on a second count, with being an accomplice in the above crime. It appears from the statement of the prosecutor, that on the night of the 24th April last, he was sleeping in his house when he was awoken by something coming in contact with his foot. He got up and seized the prisoner as he was making his escape through a hole which had been cut in his house and called for assistance, when the witnesses Ramkishore Sircar and Rajkishore Das came and helped him to secure the prisoner. These persons corroborate the above, and prove the fact of the burglary having been committed. The prisoner denies, but has set up no good defence, nor has he called any witnesses. The *futwa* of the

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Case of
JOGISHUR
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Case of
SHEIKH AL-
LUM.

Conviction
and sentence
affirmed on
appeal.

1852. law officer convicts the prisoner of the burglary, in concurrence with which, and in consideration of his having been previously convicted of culpable homicide, he has been sentenced to five (5) years' imprisonment, with labor in irons."

September 10. Case of SHEIKH ALLUM. Remarks by the Nizamut Adawlut.—Present: Mr. W. B. Jackson.)—"I see no reason to interfere with the sentence passed on the prisoner Sheikh Allum."

PRESENT:

R. H. MYTTON, Esq., *Officiating Judge.*

GOVERNMENT AND THAKOMONY MOOCHNEE

versus

PURAN PUTNEE.

1852. CRIME CHARGED.—Wilful murder of prosecutrix's husband, Rajoo Moochee.

September 10. Committing Officer, Mr. E. A. Samuells, magistrate of the Case of PURAN PUTNEE. 24-Pergunnahs. "Tried before Mr. E. Bentall, additional sessions judge of 24-Pergunnahs, on the 24th August 1852.

Culpable homicide by striking a blow in a sudden fit of passion, which blow caused the deceased to fall overboard.

Sentence one year's imprisonment, and one hundred rupees fine, commutable to labor.

Remarks by the additional sessions judge.—"The prisoner was the manjee of a boat, in which were two rowers, and another man who was in charge of the cargo. At night there was a dispute between the prisoner and the boatmen about their expenditure of oil, and Rajoo, the missing man, who was one of the boatmen and rowing at the time, was knocked or pushed overboard by the prisoner, and as it was in the river Hooghly, in the tide several *russees* from the shore, and in the month of June, he disappeared and could not again be found. This is shown by the evidence of the remaining rower and the man who was in charge of the cargo.

"This case is very similar to that of Hurree Holdar, which I tried with the same law officer in January last, and which was disposed of by your court, on the 23rd of January. I see no reason to doubt that Rajoo is dead, and although there may have been at first an unwillingness on the part of the witnesses to give information against the prisoner, yet their story is natural, and I believe that Puran Putnee caused the death of Rajoo. The quarrel was sudden, and Rajoo may have abused the prisoner, who did not strike him with any stick, and as was ordered in the above-mentioned case, I would sentence the prisoner to six (6) months' imprisonment, with a fine of rupees fifty, (50), commutable to labor on non-payment within a week."

Remarks by the Nizamut Adawlut.—(Present: Mr. R. H. Mytton.)—"The charge is wilful murder. The law officer

finds the prisoner guilty of assault, and thereby causing Rajoo to fall into the water in such a place as to render his death most probable. This is a very indistinct *futwa*, and leaves it doubtful, whether he holds the prisoner to have caused the death of Rajoo, and if so, what the offence amounts to. The sessions judge states, that he believes the prisoner to have caused death, but has omitted to state what class of homicide he considers the prisoner's offence to come under. It may be presumed, however, from his reference to the case* of Hurree Holdar, that he convicts of culpable homicide, as in that case.

"I concur in this conviction, but do not consider the sentence passed in that case adequate to this. The deceased was not in this case, as in the other, the aggressor, nor has the prisoner been six months in jail. He is therefore sentenced to one (1) year's imprisonment and to pay a fine of rupees one hundred (100) within a fortnight, and, in default of payment, to labor."

PRESENT.

R. H. MYTTON, Esq., *Officiating Judge*.

KALACHAND MULLICK

versus

AKBUR SHEIKH (No. 3) AND HAKIM OOLLAH (No. 4).

CRIME CHARGED.—No. 3, 1st count, dacoity in the house of the prosecutor on the night of the 27th February 1852, in which property, valued at Company's rupees 7,966-14-0, was plundered; 2nd count, No. 4, being privy after the fact to the above dacoity; and 3rd count, having in his possession part of the plundered property, knowing it to have been plundered in the above dacoity.

CRIME ESTABLISHED.—No. 3, dacoity, and No. 4, knowingly having in his possession plundered property.

Committing Officer, Mr. E. Jackson, joint magistrate of Baraset.

Tried before Mr. E. Bentall, additional sessions judge of 24-Pergunnahs, on the 23rd June 1852.

Remarks by the additional sessions judge.—"On the night of the 27th of February, a dacoity took place at the house of the prosecutor in the village of Ramgapore, about three miles from Baraset, and the joint magistrate went to the spot on the following morning. The darogah having heard from some one that Bissonath (witness No. 16), who lives at Gomoe, six miles off, had seen a party pass his village on the morning after the dacoity, took his

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Case of
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another.

Sentence of
fourteen
years' im-
prisonment
for dacoity, and
four years' for
having in pos-
session plun-
dered prop-
erty, confirmed.

* See Nizamut Adawlut Reports for January 1852, page 100.

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another.

evidence on the 29th February and fancied that the prisoners, who live in that direction, but six miles still further off, must have belonged to the gang who committed the dacoity, and consequently he apprehended the prisoners Nos. 1, 2, 5 and 6, acquitted on trial on the 4th of March. The prisoner No. 6, who is acquitted, made a parol statement, in which he accused Akbur (No. 3,) who was apprehended; on the 8th he confessed that he committed the dacoity with others, before the police on the 9th of March, and before the joint magistrate on the 10th of March. It is uncertain what led to the apprehension of Hakimoolah (No. 4.) He was brought before the darogah at the same time as Akbur, and it may be that both their names were mentioned in the parol statement of No. 6. The joint magistrate says, that he was apprehended owing to the confession of Akbur, but Akbur confessed on the 9th and this man was apprehended on the 8th of March. He confessed before the police and before the joint magistrate that he hid under ground in a *kulsee*, two pieces of suspicious cloth which had been entrusted to him, but which he did not know was obtained by dacoity; he produced the property hid in a *bygun* field. There is reason to believe, from the confession of Akbur, that he did not go with the dacoits, and it is more probable that he hid the property to assist a friend who was in trouble, than to get a share in it himself."

Sentence passed by the lower court.—Prisoner No. 3, to be imprisoned with labor and irons for fourteen (14) years; and prisoner No. 4, to be imprisoned, with labor and irons, for four (4) years.

Remarks by the Nizamut Adawlut.—(Present: Mr. R. H. Mytton).—"The grounds on which these prisoners were apprehended, are not satisfactory, but they have been convicted on legal proof, and their plea of being maltreated by the police to induce them to confess, is unsupported. I therefore see no reason to interfere with the sentences passed."

PRESENT :

W. B. JACKSON, Esq., *Judge.*

R. H. MYTTON, Esq., *Officiating Judge.*

GOVERNMENT

versus

JUMAL KHAN.

CRIME CHARGED.—Wilful murder of Musst. Roopban.

Committing Officer, Mr. W. M. Beaufort, magistrate of Backergunge.

Tried before Mr. A. S. Annand, officiating sessions judge of Backergunge, on the 16th August 1852.

Remarks by the officiating sessions judge.—“ The Government is prosecutor in this case.

“ The prisoner pleads ‘ not guilty.’

“ Witness No. 1, Musst. Puncha, deposes—that she is the sister of the deceased Roopban, and that about two years ago, her husband, Khan Mahomed, went to clear land in the Soonderbunds, when she at her own request remained behind, and was lodged in the house of the prisoner, his brother-in-law, where her husband used to come occasionally and see her, and then return to the Soonderbunds; that he came in Bysakh last, and on the 9th of that month, the prisoner asked him to pay two rupees which were due for the keep of the witness, when her husband replied, that he could not conveniently pay then, but would do so shortly. On this the prisoner took up a *dão* and ran after him, when his wife, the deceased, getting before him, said, ‘ Are you a fool, if he ‘ does not pay you, make him give a bond for the amount, where ‘ do you think you will get your money from, if you kill him?’ This very sensible advice the witness says made prisoner so angry, that he seized his wife by the hair with the left hand, and holding her head forward, struck her with the *dão* so forcibly on the back of the neck, that he nearly severed her head from her body, when she sank down and died almost instantly. The prisoner then began to cut himself in various places, and called out that he had killed his wife and would kill himself, when Doola Khan, (witness No. 2,) came up and seized him, and Badullah went to the thanna to give intelligence of the murder, and the darogah came, inquired into the case, and sent the body and the parties implicated to the sudder station. Witness saw the blow struck from a distance of eight or ten *kaths*, her husband had paid one rupee for her board and lodging, a few days before, and the two rupees were the balance remaining due. The prisoner thought that witness would accompany her husband when he returned to the Soonderbunds, and that then he should have no

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Case of
JUMAL KHAN.

Prisoner,
who killed his
wife on her
interfering
between him
and his brother-in-law,
sentenced capitally.

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Case of
JUMAL KHAN.

chance of recovering what they owed him ; recognizes and identifies the *dāo* which is shown to her as the one with which her sister was killed. It is a very sharp one, and weighs five and a half chittacks. Points out and identifies the prisoner. Witness No. 2, Doola Khan, corroborates the above in every material point. He also saw the prisoner seize his wife by the hair, drag her head down and then strike her with the *dāo* on the back of the neck, when she fell and died as before described. The unfortunate woman was suckling an infant daughter, when she was struck down by her husband and fell forward upon its body. Witness No. 3, Khan Mahomed, (the husband of Musst. Pancha, witness No. 1,) also saw the deed done and corroborates all that has been above stated. There are several other witnesses who are cognizant of the general facts of the case, and whose evidence all goes to substantiate what has been reported. The body was in such a state of decomposition when it arrived at the station, that it fell to pieces directly it was unwrapped, and no *post mortem* examination could be made by the civil assistant surgeon in consequence. The prisoner Jumal Khan stated in the Mofussil, that he had a quarrel with Khan Mahomed, regarding the removal of his wife to the Soonderbunds, when the latter struck him with a *dāo*, which prisoner then wrested from him and struck him in return, intending to kill him, but the blow fell upon his wife Roopban, who happened to be in the way, and killed her instead. He tells the same story in the magistrate's court, which is wholly unworthy of belief, contradicted as it is by the evidence of three eye-witnesses, two of whom are his own relations, and none of whom, as far as the evidence shows, had any previous animosity or ill-feeling towards him, and he names no witnesses to substantiate his defence.

"The jury convicted the prisoner of the wilful murder of Musst. Roopban, and I concur in this verdict. The prisoner was enraged by what his wife said to him, and acted no doubt on the impulse of the moment, but a man who could, as this man did, kill his wife with his own infant at her breast, on such very trifling provocation, is not, in my opinion, an object for mercy, and I recommend that he should suffer the extreme penalty of the law."

Remarks by the Nizamut Adawlut.—(Present : Messrs. W. B. Jackson and R. H. Mytton).—MR. MYTTON.—"The prisoner is proved to have murdered his wife with a *dāo*, for no other reason than that she pointed out the folly of his killing his brother-in-law, which he appeared to be about to do.

"I can discover no circumstance in his favor, and concurring with the sessions judge, would sentence him to suffer death."

MR. JACKSON.—"I agree in convicting the prisoner Jumal Khan of the murder of his wife, and in sentencing him to suffer death."

PRESENT:

W. B. JACKSON, Esq., Judge.

RAJCHUNDER DHOBEE

versus

MADHUB DUTT DASS.

CRIME CHARGED.—1st count, burglariously entering the house of Rajchunder Dhobee; 2nd count, knowingly receiving and possessing property obtained in the aforesaid burglary.

CRIME ESTABLISHED.—Knowingly receiving and keeping property acquired by burglary.

Committing Officer, Mr. C. Mackay, principal sudder ameen of Furreedpore, exercising the powers of magistrate.

Tried before Mr. C. T. Davidson, sessions judge of Dacca, on the 16th July 1852.

Remarks by the sessions judge.—“The prisoner is charged with burglary and theft of property, value six annas, and on a second count, with receiving stolen property, knowing it to have been so acquired. On the night of the 2nd March last, prosecutor awoke and heard a man in his house whom he seized. He struggled and got away, but was again captured on the spot by Ramchand and Hurry Hur, chowkeedars. The fact of prosecutor’s house having been burglariously entered, and the arrest of the prisoner on the spot are duly proved. The prisoner in his defence states, that he went into prosecutor’s cow-house to sleep, when he was seized by him and charged with having broken into his house. The *futwa* of the law officer convicts the prisoner of the crime charged, and declares him liable to *tazeer*, in concurrence with which, and in consideration of a former conviction and sentence of three (3) years, for burglary and theft, he has been sentenced as described in column 12 of this statement.”

Sentence passed by the lower court.—Five (5) years’ imprisonment, with labor and irons.

Remarks by the Nizamut Adawlut.—(Present: Mr. W. B. Jackson.)—“The sessions judge in his proceedings concurs in the opinion of the law officer, who convicts the prisoner of committing a burglary. The prisoner was caught in the act by the prosecutor and others and secured. In the statement the entry of conviction is for *knowingly receiving property*. This is apparently a mistake. I concur in the conviction of burglary, and with reference to the prisoner’s previous conviction, I see no reason to disturb the sentence passed on him of five (5) years’ imprisonment, with labor and irons.”

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Case of
MADHUB
DUTT DASS.

Sentence affirmed. Inaccuracy of the sessions judge in recording the conviction pointed out.

PRESENT :

A. J. M. MILLS, Esq., *Officiating Judge.*

DOOKHIRAM RAJBUNSEE

versus

RAMDOSS RAJBUNSEE.

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Case of
RAMDOSS
RAJBUNSEE.

The prisoner was convicted of culpable homicide in having so assaulted the deceased, his concubine, while in an advanced state of pregnancy, that having given birth to a dead child she not long afterwards died.

CRIME CHARGED.—1st count, culpable homicide of Chandmoney Bewah; 2nd count, assaulting and beating the said Chandmoney in such a way as to cause her death ten days after, she having been in the meantime delivered of a dead infant.

CRIME ESTABLISHED.—Assaulting and beating Chandmoney in such a way as to cause her death ten days after, she having been in the meantime delivered of a dead infant.

Committing Officer, Mr. R. H. Russell, officiating joint magistrate of Bograh.

Tried before Mr. T. Wyatt, sessions judge of Rungpore, on the 13th July 1852.

Remarks by the sessions judge.—“From the statement of the prosecutor (the father of the deceased woman) and the evidence adduced on the trial, it was proved that the prisoner had, on the 21st April last, or 10th Bysakh 1259, ordered his concubine ‘Chandmoney Ourut,’ the deceased, who was near her confinement, to wind some thread, which having refused to do and gone abroad to a neighbour’s house, the prisoner, angry, went to the said house, and seizing her by the hair of her head brought her to the ground and dragged her some yards, gave her a kick and a blow on the back with his fist. Deceased got up and walked to her hut, which adjoined the prisoner’s premises, where she suffered from internal pain for eight days and then gave birth, before her time it was supposed, to a dead infant, and three days afterwards died.

“The prisoner voluntarily confessed in the Mofussil and foudaree to having assaulted the deceased. In his defence, the prisoner pleaded that he had only given the deceased a blow with his open hand on her left side; that he had not dragged her nor kicked her, but that the darogah, in taking his answer, had made him admit more than he had done on the score of having kicked the deceased, which he had not done; that she had experienced internal pain six days subsequently, and after two days more gave birth to a dead infant, when he was arrested by the police for the murder of the child, after which he heard deceased had died, which she had done from the effect of her confinement.

“The prisoner’s defence was of no avail to him.

“The jury, by their verdict, found the prisoner guilty of the second count in which I concurred.”

Sentence passed by the lower court.—Imprisonment, with labor and irons, for six (6) years.

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Remarks by the Nizamut Adawlut.—(Present: Mr. A. J. M. Mills.)—"The evidence to the prisoner seizing the deceased by the hair of the head, to his dragging her some yards along the ground, and to his then giving her a kick and a blow, on the back or the side with his fist, is distinct and consistent. It is also corroborated by his confessions and by the testimony of the deceased, which was taken on oath by the darogah, after she gave birth to the dead child: of his brutal assault on the deceased, therefore, there is abundant proof.

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Case of
RAMDOSS
RAJBUNSEE.

"The deceased deposed that she suffered greatly from the injuries she received, and on the fourth day labor pains came on, and on the eighth day she gave birth to a dead child.

"The body of the deceased was sent into the station, but it arrived in too decomposed a state to admit of examination. It appears, however, from the inquest and the report of the darogah, that after the birth of the dead child, viz., on the 28th of April, the powers of the womb became paralyzed, which not unfrequently follows the birth of a dead child, and that from inaction the placenta was never expelled. The deceased died on the 1st of May.

"The prisoner urges in appeal that the burkundauz made the deceased cut the umbilical cord before the placenta was removed, and this unskilful treatment caused the woman's death, but such was not the case; on the contrary, it appears that the nurse remonstrated against the severing of the cord, and the child remained attached to the mother till the cord separated on the 30th from the effects of decomposition.

"The deceased was close on her confinement, and the reasonable presumption arising from the facts above given is, that she died from the effects of the beating, and the child was killed by the blow or the shock which she received at the time the beating was inflicted.

"The sessions judge convicts on the second count; it is vaguely worded, but it clearly amounts to culpable homicide, of which I convict the prisoner.

"The case of the prisoner is considerably aggravated by the fact of the deceased being in a very advanced state of pregnancy, when she was so savagely treated. Further, it is on the record that the prisoner was in the habit of beating her on the most trivial pretext, with the avowed object of inducing her to leave his protection and thereby avoiding the expense of her maintenance, which the police darogah had some time before enjoined him to supply. Under the above circumstances, I do not consider the sentence of the sessions judge too severe. I reject the appeal."

PRESENT :

A. J. M. MILLS, Esq., *Officiating Judge.*

GOPAL MODUK

*versus*KISTO ROY (No. 15), NARAIN ROY (No. 16) AND
LOCHUN ROY CHOWKEEDAR (No. 17).

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Case of
KISTO ROY
and others.Held that
the evidence
fully esta-
blished the
prisoner's
guilt. Con-
viction and
sentence
affirmed on
appeal.

CRIME CHARGED.—1st count, committing, on the night of the 7th April 1852, corresponding with the 26th Cheyt 1258, dacoity in the house of the prosecutor, wounding him, his son, Bhyrub Moduk, and his niece, Sreemottee Sokhee; at the time of committing the said dacoity and plundering property valued rupee 1-4-0; 2nd count, belonging to a gang of dacoits.

CRIME ESTABLISHED.—Committing dacoity in the house of the prosecutor, wounding him, his son, Bhyrub Moduk, and niece, Sreemottee Sokhee, at the time of committing the said dacoity and plundering property valued at rupee 1-4-0.

Committing Officer, Baboo Jogesh Chunder Ghose, deputy magistrate of Gurbetta, zillah West Burdwan.

Tried before Mr. P. Taylor, sessions judge of West Burdwan, on the 8th July 1852.

Remarks by the sessions judge.—“The prisoner Kisto Roy was chowkeedar of the prosecutor's village, but resigned his appointment on the 16th March last, or twenty-one days before the dacoity, Narain Roy was acting ghutwal of Kurowa, a village ten *beegahs* distant from that of the prosecutor, but also resigned on the above date, and Lochun Roy was chowkeedar of the same village, and Narain Roy's father.

“Though the resignation of the two first-named prisoners was accepted by the deputy magistrate of Gurbetta on the date above cited, no substitutes had been appointed up to that of the dacoity, and the ghutwals of the ilaqua were thus guilty of great neglect.

“It came out in evidence before the sessions court that the object of the attack must have been some cash, which Musst. Goopennee, the sister of the prosecutor, had publicly rescued from a fire that took place in his house the year before last.

“As three dwellings were then burnt, and the disturbance was considerable, the chowkeedars, ghutwals, and other loose characters of Kurowa were most probably present, and obtained ocular proof of Goopennee's wealth. Prosecutor's western-doored house, in which his sister Goopennee and his niece Musst. Sokhee were sleeping, and which was doorless, and situated in a doorless compound, was attacked on the night noted, by ten or twelve dacoits. Goopennee was the first person seized, and her

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Kisto Roy
and others.

screams awoke Musst. Sokhee, who immediately recognized the prisoner Kisto Roy, (No. 15,) and asked him what he was about. Upon this the said prisoner gave her a chip on the head with a naked sword which he carried, the blood and fright caused by which completely engrossed her attention, until all was over. By this time the prosecutor and his son, Bhyrub Moduk, a lad of eighteen, armed with a *lattee*, came to the rescue; the former seized the prisoner Narain Roy, (No. 16,) by the throat, and the latter laid about him in all directions. The prisoner Kisto came to Narain's rescue, and struck the prosecutor slightly on the right side of his head with his sword; the latter then raised his hand to defend his head, and got another hack, about two inches deep, in a dangerous place, *viz.*, between the thumb and fore-finger of his left hand. These wounds put the old man *hors de combat*, but not before he had recognized the three prisoners committed and a number of other persons, who were either *sangatees* or connexions of theirs, and were all well-known to him, because they lived close by.

"The prosecutor's son Bhyrub recognized as many of the dacoits as his father, and fought long enough with them, in the moonlight, to get a good beating and arouse the village, when they made their escape, but not before witness Nos. 2, 3, 5 and 9 had clearly recognized them.

"The broken scabbard of a sword, with a peculiar pattern on it, and a *lattee*, were found in the house when the neighbours came up, and to them the prosecutor and his son and niece named the prisoners committed and others as having been recognized by them among the dacoits.

"It was clearly proven that the sword to which the broken scabbard appertained, was the property of the talookdar of the village, witness No. 8; that it had been borne by successive chowkeedars, and that it had been in the hands of the prisoner Kisto Roy (No. 15) up to the date of the dacoity. The prosecutor's son Bhyrub, witness No. 1, declared that the said scabbard had been broken in two by a blow of his *lattee*, and that the club found had been knocked by him out of the hand of the prisoner Narain Roy (No. 16) during the skirmish.

"Other witnesses deposed that the said club was Narain's, but their statements were not steady enough for belief.

"It was not till the next morning that the prosecutor discovered the abstraction of a *lotah*, *kutora* and a piece of cloth, from the verandah of the western-doored house.

"Notice was given to the ghutwals before the night closed, and the prisoners were seized next day. No property was found, though their houses, and those of the other persons named by prosecutor, were searched, but the wife of Kisto Roy (prisoner No. 15) was found washing a *dhootee* belonging to her husband,

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Case of
Kisto Roy
and others.

which still retained faint marks of blood when produced before the court.

"The circumstances above detailed, together with the *sooruthal*, were duly proven by the evidence of the witnesses, which was not discrepant in any important particular, and reference to the almanac showed that the moon was not long past the full on the night of the occurrence.

"The recognition of persons so well known to all the villagers as the prisoners, must, therefore, have been easy; moreover, no quarrel or ill-will of any kind appears to have subsisted between the prosecutor's family, or the other eye-witnesses and the prisoners committed.

"The defence of Kisto Roy, (prisoner No. 15,) was that the villagers disliked him, because he had been appointed chowkeedar against their will; that he had resigned because the villagers did not give him enough to support him; that he had returned the sword, of which the scabbard was found, to Madhub Sircar's mother and servant, after he had resigned, and that the marks upon the *dhootie*, which his wife had been found washing, were caused by the juice of unripe mangoes.

"The defence of prisoner Narain (No. 16) was that he was at a proximate village, listening to poojah music on the night of the dacoity and remained there until 3 o'clock the next morning, and that the talookdar and some of the witnesses had had quarrels with him regarding wood-cutting, charcoal-making, and destroying crops upon his chakran lands.

"The defence of the prisoner Lochun Roy (No. 17) was that he was on his beat in Kurowa on the night of the dacoity.

"The witnesses of the prisoners, who were nearly all of them their relations or caste counexions, did not substantiate what they alleged.

"The evidence against the prisoner Kisto Roy (No. 15) *viz.*, the testimony of the prosecutor, his son and niece, their wounds, evidently inflicted by slight hacks of a very sharp weapon, the evidence of the unprejudiced persons, some of whom saw all three, and some two of the prisoners escaping by bright moonlight; the finding of the sword scabbard; its history; the way in which prisoner's resignation was given; the fact of his having been chowkeedar of the village, and well-known by every one in it, the absence of any quarrel or enmity between him and the prosecutor's family or the villagers, and the finding of the blood-stained *dhotee* in his wife's possession the day after the occurrence, appeared to me to amount to sufficient legal proof of his guilt on the first count of the indictment, and I, therefore, sentenced him as noted.

"The evidence against the other two prisoners, *viz.*, Lochun Roy (No. 17) and Narain Roy (No. 16) consisted of the state-

ments of the prosecutor, his son and niece, and the eye-witnesses Nos. 2, 3, 5 and 7, but when I considered the bright nature of the light in which they were seen, the absence of enmity, and the perfect knowledge of their persons possessed by every one who saw them, the contiguity of their village to that of prosecutor; their near relationship to each other; the fact that the prisoner Narain had resigned his appointment on the same date, and in apparent consentaneity with Kisto Roy, and that they must have shared that prisoner's knowledge of the riches of Goopenee, it appeared to me, that the presumption of their guilt, on the first count of the indictment was violent, and I, therefore, sentenced them also as noted.

"Two additional years' imprisonment, with labor in irons, were inflicted upon the prisoner Lochun (No. 17), who was chowkeedar of Kurowa on the night of the dacoity.

"I considered it right to remind the deputy magistrate that the neglect of the ghutwals had not been properly noticed, and to point out to him that when the resignations of rural police officers are accepted, they should be held responsible for the safety of their village until their successors have actually assumed charge."

* Sentence passed by the lower court.—Prisoners Nos. 15 and 16, to twelve (12) years' imprisonment, with labor in irons, in banishment, and two (2) years' more in lieu of stripes, total, fourteen (14) years each, with labor in irons, in banishment; and prisoner No. 17 to twelve (12) years' imprisonment, with labor in irons, in banishment, and two (2) years in lieu of stripes and also two (2) years more in consequence of his being a chowkeedar, altogether, sixteen (16) years, with labor in irons, in banishment.

Remarks by the Nizamut Adawlut.—(Present: Mr. A. J. M. Mills).—"The prisoners have appealed. The petition of appeal merely recapitulates the statement made in the defence. I see no reason to question the propriety of the conviction. The evidence to the recognition of the prisoners in this case is distinct and consistent. The prisoners were well-known to the witnesses; they lived but a short distance off, and at daybreak they were followed up to their houses and apprehended before the police arrived; and the truth of the recognition is further corroborated by the circumstances detailed in full by the sessions judge. I confirm the conviction and sentence and reject the appeal."

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PRESENT :**W. B. JACKSON, Esq., Judge.****GOVERNMENT AND MUSST. RUGHOOEE***versus***GUNNESS (No. 6), RAMDHUN (No. 7) AND RAM ROOCH
(No. 8).****1852.****September 11.****Case of
GUNNESS and
others.****Sentence
passed upon
the prisoners
convicted of
culpable homi-
cide, affirmed
on appeal.****CRIME CHARGED.**—Wilful murder of Domun, husband of the prosecutrix.**CRIME ESTABLISHED.**—Culpable homicide.**Committing Officer, Captain W. H. Oakes, principal assistant agent Governor General of Lohurdugga.****Tried before Major J. Hannington, deputy commissioner of Chota Nagpore, on the 18th August 1852.****Remarks by the deputy commissioner.**—"The deceased, Domun Noniar, had for some years taken the mother of the prisoners into keeping and recently she left him and returned to live with her sons, who had, as it appears in evidence, been much dissatisfied with the arrangement, and the prisoner Ramdhun had threatened vengeance.**"About noon, on the 20th April last, the deceased either went of himself, or was brought to the prisoners' house and there was set on by the three prisoners, who bound, beat and kicked him so severely, with their hands and feet only, that one at least of his ribs was broken, and the injury sustained was such that he died on the spot, inside the prisoners' house. Several witnesses, attracted by the noise, ran and saw, and have by their evidence proved the assault by the three prisoners, and the immediate decease of Domun. The prisoners in their defence said that the deceased came into their house reeling drunk, that he fell and died. Some witnesses on their part failed to prove this. The jury found the prisoners guilty of culpable homicide, in which I concurred, and considering the offence to be of an aggravated character, I sentenced the prisoners as shown."****Sentence passed by the lower court.**—Imprisonment, with labor and irons, for five (5) years each.**Remarks by the Nizamut Adawlut.**—(Present : Mr. W. B. Jackson.)—"The evidence against the prisoners as to the beating and maltreating the deceased, and against Gunness as to his kicking him in the ribs and breaking one of the ribs, is clear; the deceased died on the spot from the treatment he received. I see no reason to interfere with the sentence passed by the sessions judge."

PRESENT :

R. H. MYTTON, Esq., *Officiating Judge.*

ESSURCHUNDER GHOSE

versus

WARIS (No. 1), LAL MAHOMED (No. 2), TILUCK-CHUNDER GOPT (No. 3), COMAL KISHEN KUR (No. 4), SUMBOONATH BOSE (No. 5), KALOO (No. 6), ARWANT KHAN (No. 7), KUMMUROODDEEN (No. 8), KURRUMOODDEEN (No. 9), RAM TUHAL SINGH (No. 10), RUN GAZY (No. 11), KULLEEM (No. 12), CHARROO (No. 13), DAOREE (No. 14), MASSOD (No. 15), KUDDEERODDEEN (No. 16), KULLEEM (No. 17), BULRAM PUTNEE (No. 18) AND NEELKANTH ROY (No. 19).

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Case of
WARIS, *alias*
FAIZOOD-
DEEN SIRDAR
and others.

1. The homicide of a man opposing the attack of a large body of armed men upon a house with intent to seize one of the inmates, is wilful murder, commitment for culpable homicide was erroneous.

2. Further evidence for the prosecution may be called for in an appealed case.

3. In a case of atrocity, but not one of those enumerated in Regulation X.

CRIME CHARGED.—Nos. 1 to 18, riot attended with the homicide of Dhunaye Kazi and the wounding of Roushun and Radhanath Dutt. No. 19, instigation of, and being an accessory before the fact to the said riot.

CRIME ESTABLISHED.—Nos. 1 to 18, riot attended with the homicide of Dhunaye Kazi and the wounding of Roushun and Radhanath Dutt, and No. 19, of instigating a riot attended with homicide of Dhunaye Kazi, and the wounding of Radhanath Dutt and Roushun, and being an accessory before the fact to the said riot.

Committing Officer, Mr. W. M. Beaufort, magistrate of Backergunge.

Tried before Mr. A. S. Annand, officiating sessions judge of Backergunge, on the 5th July 1852.

Remarks by the officiating sessions judge.—“ Essurchunder Ghose, the prosecutor in this case, deposes, that he is *tehseldar* of Rajib Lochun Singh, in hqwa Rajnarain Singh, kismut Talookdaran, and that at the beginning of Poos last, his master Rajib Lochun, and his nephew Radhanath Dutt and their ser-

of 1824, the court suggested application to Government for pardon to one of the accomplices on condition of giving full evidence.

4. The issue of the suggestion being opposed by counsel on both sides, the resolution containing it cancelled.

5. There is no legal impediment to a convicted person giving evidence against his accomplices.

6. The word principal as applied in Regulation X. of 1824, is not used in its English law sense.

7. A person is guilty as an instigator if the act done is the probable consequence of that instigated.

8. Certain evidence considered insufficient to support a conviction of instigating a riot with homicide.

9. Certain evidence is considered untrustworthy as to presence in a case of riot.

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others.

vant Futteek Pal came to the cutcherry and remained there. On the night of the 27th of that month, deponent and his servant Ram Raja Dass and those above-named, with a traveller named Kumulnarin Chuckerbutty were there, together with Uzmud Ullah, the owner of the *baree*, and Nouabdeen his nephew; that a little before dawn, about three hundred or three hundred and fifty men, servants of Neelkanth Roy, armed with *soolfees*, spears, clubs and shields were coming to attack the cutcherry, when deponent and the others left it and retreated to the house of Summeerooddeen, where on account of there not being room for them in the cutcherry, four peadahs of Rajib Lochun's, named Zuherooddeen, Dhunaye Kazi, Roushun and Kokye Mullick were lodged; that the rioters not finding them in the cutcherry after a short interval came into the house of Summeerooddeen crying out *Alee, Alee, Kalee, Kalee*, and called out that it was the order of Neelkanth Roy, that they should seize and carry off Rajib Lochun Singh.

"The peadahs behind whom the deponent and his master remained, replied that he was not there, when Lal Mahomed, (No. 2,) struck Dhunaye a blow on the head and Waris, (No. 1,) thrust a *soolfee* into his belly above the navel and he fell on the ground. The rioters then struck Roushun with *soolfees* on the left side of the nose, and on the shoulder, and on the thigh, and he also fell. On seeing this plaintiff ran off to give intelligence at the thanna, where he arrived in the afternoon and gave his deposition before the darogah, and on the next day returned to the place with the jemadar; Radhanath Dutt and Roushun were brought in that day also, from the cutcherry of the talookdar of Arz Begee by the jemadar. Radhanath Dutt had a wound on his forehead and on the calf of his left leg. The jemadar then went off to the cutcherry of Neelkanth Roy at Gopal Dhee to seize the prisoners, and on the next day the wounded men, after having given their depositions before the darogah, were sent in to the magistrate. When deponent ran from the rioters to give information at the thanna of his master, Rajib Lochun was escaping to the cutcherry of Eshur Chuckerbutty, and on returning from the thanna he heard from him that he had been there and that the rioters had carried off the body of Dhunaye Kazi towards the North. Summeerooddeen's house is one *droon* distant from Uzmud's, in which deponent and the others were when they saw the prisoners coming to attack them. Neelkanth Roy has long desired to get deponent's master's howla to join it to his own putnee talook which almost surrounds it. Saw the attack upon, and wounding of, Dhunaye from a distance of twenty-five *haths*. It was then daylight. The cutcherry of Neelkanth Roy at Gopal Dhee is about a mile or a mile and half distant from where deponent was. Summeerooddeen is a *ryot* of Rajib Lochun's.

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"The prisoners plundered the house of Uzmüt, our cutcherry, and then Summeerooddeen's. Had heard before that Neelkanth had given orders to his dewan Tiluckchunder Gopt (No. 3) to seize and carry off my master, and had assembled people for that purpose at the Gopal Dhee cutcherry and at the house of Kuddeerooddeen at Nulcolah—supposes that they have thrown the body of Dhunaye into the sea, which is near, as it has not been found; he was a healthy man, about forty-five years old. Rajib Lochun Singh had come to his howla to look after the collection of his rents which he used frequently to do. His house is two days' journey from this howla. Deponent and his master remained behind a large tamarind tree, close to the house, and the four peadahs were before them, the rioters did not see them on that account as they did not come round the tree. Recognizes and identifies the prisoners Nos. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17 and 18, as present, and aiding in the riot and attack. Knew before Nos. 3, 4, 5, 11 and 17, and recognized the others when he saw them at the thanna and heard their names.

"Neelkanth himself was not with the rioters, but deponent had heard that on the previous day, Saturday, he was at his cutcherry in Kuddeerooddeen's *baree* in Nulcolah, and ordered his people to be sent to carry off Rajib Lochun. Nulcolah is about half a mile (half a *ghurree*) from Rajib Lochun's howla. The rioters came both from Nulcolah and from Gopal Dhee, where Neelkanth Roy has another cutcherry. There has been a quarrel between Neelkanth and deponent's master for the last three years about this howla. Of the prisoners present, No. 3 is the dewan of Neelkanth Roy; No. 4 is his mudud naib; No. 5 is his mohurir; No. 6 is his servant employed in trade; Nos. 1, 2 and 7 are his *lutteals*; Nos. 8, 9, 11, 14, 15 and 17 are his *ryots* and servants; Nos. 12, 13, 16 and 18 are his *ryots*; No. 10 is a servant of his employed in the *malikhana* at Gopal Dhee. Before escaping to the thanna, deponent saw the rioters dragging off the body of Dhunaye by the hands and feet with the back on the ground. Dhunaye left a brother named Kummurooddeen Kazi, a son and widow. Radhanath Dutt was not wounded until after deponent had run away from the rioters. The thanna is nearly a day's journey from the place where the riot occurred. Has heard that the body of Dhunaye has been thrown into the sea.

"The prisoner Waris or Faizooddeen (No. 1), who had a wound on his head when he was arrested, confessed at the thanna before two darogahs who investigated the case, one of whom was an officer of the first class, that he was a servant of Neelkanth Roy's who came to Nulcolah a day or two before the end of Poos, and ordered him with others to attack the cutcherry of a Singh, whose name he did not recollect, and seize and bring him away; that

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he went with the others to do so and the attack was made and Dhunaye killed and carried away, as before described. He denied the charge before the magistrate and in my court. Lal Mahomed (No. 2) confessed at the thanna that he was a servant of Neelkanth Roy, who came to Nulcolah and arranged and ordered the attack upon Rajib Lochun Singh, because he could not get possession of his howla, in which attack this prisoner took a part and in which Dhunaye Kazi was killed as before described. He denied the charge before the magistrate and in my court. Tiluckchunder Gopt (No. 3), Comal Kishen Kur (No. 4), Sumboonath Bose (No. 5), and Kaloo Jemadar (No. 6), denied all knowledge of the case at the thanna before the magistrate and in the sessions court. Arwant (No. 7) and Kummurooddeen (No. 8) confessed at the thanna and before the magistrate that Neelkanth had come to Nulcolah on the day before the riot, Saturday, the 27th Poos (10th January 1252,) and ordered them to attack the cutcherry of Rajib Lochun Singh, and carry him off; that they did so and that in the attack Dhunaye was killed and his body taken away in a boat towards the sea. These authenticated confessions fully bear out the evidence of the prosecutor and witnesses in every respect. Kurrumooddeen (No. 9) confessed as above at the thanna and denied the charge before the magistrate and in my court. Ram Tuhai Singh (No. 10), Run Gazy (No. 11), Kulleem (No. 12), Charroo Jemadar (No. 13), Daoree (No. 14), Massod (No. 15), Kuddeerooddeen (No. 16), Kulleem (No. 17), Bulram Putnee (No. 18), and Neelkanth Roy (No. 19), denied all knowledge of the case in all its stages.

"Witness No. 1, Rajib Lochun Singh, deposes, that he has a howla called Rajnarain Singh, in kismut Talookdaran, of which the prosecutor is gomashita; that his tehsil cutcherry is held in a house of Uzmutullah's *baree*; that he went there about the 10th or 12th Poos last, to look after the said howla, taking with him his nephew, Radhanath Dutt, and his servant, Futeek Pal and Dhunaye, Roushun, Zuherooddeen and Kokye, tehsil peadahs; that on the night of Saturday, the 29th Poos, he and his nephew and servant and the prosecutor with his servant, Ram Raja Dass, were sleeping in the cutcherry and the four peadahs in the house of Suddeerooddeen, because there was not room for them in the cutcherry, when, just before dawn, he was awake by hearing them say that Neelkanth's people were coming in great numbers to seize him, when he ran away to the house of Suddeerooddeen, where his peadahs were. Shortly after, at daylight, they came on, calling out *Alee, Alee, Kulee, Kulee*, to Suddeerooddeen's house, crying out that it was the order of Neelkanth to seize and carry off witness. The peadahs replied that he was not there and a fight then began between Neelkanth's men and witness' peadahs. Lall Mahomed (No. 2) struck

Dhunaye on the head with a *lattee* and Waris (No. 1) came up and thrust a spear into his belly. On seeing this witness went up to the prosecutor, who was behind a large tamarind tree, and thence saw Roushun wounded with a *soolfee* in several places when he also fell on the ground. The prosecutor then ran away to give intelligence at the thanna. After which witness saw Radhanath wounded with a *lattee*, when he, witness, escaped into the jungle near and hid himself there, whence he saw a number of men seize the feet of Dhunaye and drag him off towards the North, and the remaining rioters plundered the house of Summeeroodeen and then went away. Witness then went to Eshur Chuckerbutty's cutcherry in Arz Begce, to which place Roushun was afterwards brought on a *jhamp* and Radhanath walked. On the next day the jemadar came, the inquiry commenced, and the parties were shortly afterwards sent in to the magistrate. There was a traveller sleeping in the cutcherry that night who said his name was Kumulnarain Chuckerbutty, but where he went afterwards witness does not know, or where his house is, or anything about him. Saw the prisoners from a distance of twenty or twenty-five *haths*; they were armed with *soolfees*, spears and *lattees*, but cannot say who wounded Roushun and Radhanath. Neelkanth is a wealthy man and has long desired to get witness' howla; the object of the attack was to turn him out of it, and get him to give it up through fear. There has been enmity between witness and Neelkanth for three years on this account. The jungle in which witness took refuge is about two *kanees* from the house. Believes that the prisoners have thrown the body of Dhunaye into the sea. Neelkanth's people have before come to witness and threatened him saying that Neelkanth's land was on three sides of his and he wanted the piece of ground which witness occupied and that he must give it up. Recognizes and identifies the prisoners Nos. 1 to 18, inclusive, as being present at, and aiding in, the attack. Knew all the prisoners before, except Nos. 9 and 18; they are all servants and *ryots* of Neelkanth Roy. The prisoners stopped when Dhunaye was killed, frightened apparently, and witness owes his escape to this.

"Witness No. 2, Radhanath Dutt, (the nephew of Rajib Lochun, the last witness,) corroborates the above in all material points; he was struck on the forehead himself but does not know by whom. The wounds were trifling and have healed. Recognizes and identifies as present at the attack the prisoners from Nos. 1 to 18, inclusive.

"Witness No. 3, Roushun, deposes to the same effect as the last two witnesses. He was wounded severely on the nose, on the left arm and on the left leg with a *soolfee* in the attack, but cannot say who struck him. He remained in the hospital for

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seventeen days and was then sent out with his wounds healed. The wound on the left leg had been a very severe one, the *soolfee*, judging from the deep scar on both sides, having passed right through the calf; the others were not so serious. This witness recognizes and identifies the prisoners Nos. 1, 2, 3, 4, 7, 9, 11, 12, 13 and 17 as present at the attack when Dhunaye was killed and Radhanath and himself wounded.

" Witness No. 4, Futteek Pal, the servant of Rajib Lochun, tells the same story as nearly as possible, and recognizes and identifies the prisoners Nos. 1, 2, 3, 4, 6, 8, 9, 10, 11, 14, 15, 16 and 18.

" Witness No. 5, Ram Raja Dass, corroborates the previous evidence, and recognizes and identifies by name the prisoners Nos. 1, 2, 3, 4, 5, 6, 8, 10, 11 and 15, and states that he saw at the attack Nos. 7, 12, 13, 14, 16, 17 and 18, though he does not know their names.

" Witness No. 6, Zuheerooddeen, the same as above or nearly so.

" Witness No. 7, Summeerooddeen, ditto, ditto.

" Witness No. 8, Dowlat, ditto, ditto.

" Witness No. 9, Kulleem Gazy, ditto, ditto.

" Witness No. 10, Ram Jewun Dhobee, deposes, that he saw the attack as above described, his house being close to that of Uzmud's which was attacked in the first instance.

" That on the day before the riot, he went to Nulcolah to receive some money from Sheebesur Shaw (the mohurir wrote by mistake Shorope Beparee), and he then saw Neelkanth Roy there on his boat, and his dewan Gopal Gopt was sitting near him; that he heard him say to Gopal 'where are the men,' and the latter replied, 'they are coming.' This relation of the conversation witness heard is not credible; he appears to have added it to strengthen his testimony, which it has only weakened.

" Witness No. 11, Asanullah's evidence as above, corroborating the prosecutor's statements of the attack, and deposes to having been at Nulcolah on the previous day and seen Neelkanth there.

" Witness No. 16, Chamaroo, saw the attack, and corroborates the other evidence. Deposes that he was at Nulcolah on the previous day, and saw Neelkanth there with a number of his people, that they were talking together, but he does not know what about.

" Witness No. 26, Soonder Khan Burkundauz, who apprehended prisoners Nos. 1 and 2, deposes to their, stating that Neelkanth had come to Nulcolah, the day before the riot, and given orders for the attack on Rajib Lochun Singh.

" Witness No. 27, Ackur Burkundauz, deposes as above.

" There are several other witnesses who testify to having seen Neelkanth at Nulcolah on the day before the attack took place,

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and two of his own *ryots*, who depose that he wished them to join in it, and though their evidence is in some points unsatisfactory and like most evidence in this country partly false, the impression left by the whole upon my mind after they had been rigidly examined by myself and the vakeels of both parties was, that, without doubt, he had been there on the day before the occurrence, for the purpose of arranging the attack which took place and that he did arrange and order it.

"The prisoner No. 1, who confessed at the thanna, replied finally before me that he got his living by cultivating the earth, and had a fever all Poos.

"No. 2, who also confessed at the thanna, replied that his *sufae* witnesses would prove that he was a good character.

"No. 3 replied that he aided in no riot of any kind; that there was a quarrel between Rajib Lochun Singh, witness No. 1 and Gowreenath Gangolee, on account of the possession of a five annas, six and a half *gundah* share of Rajib Singh's howla, but there had been a fight between them and their people on this account in Aghun or Poos last, and that in that affray two men had been wounded.

"No. 4 replies, that he had heard of the riot stated to have taken place by No. 3, and had nothing himself to do with the crime with which he was charged.

"No. 5 defends himself by an *alibi*.

"No. 6 ditto, ditto.

"No. 7 confessed at the thanna and before the magistrate, replies here that Rajib Lochun Singh persuaded him to do so.

"No. 8 confessed at the thanna and before the magistrate; replies here as No. 7.

"No. 9 confessed in the Mofussil—denies all knowledge of the case here.

"No. 10 replies that he will prove that the riot took place between Rajib Lochun Singh and Gowreenath Gangolee.

"No. 11 an *alibi*. No. 12 replies as No. 10; No. 13 an *alibi*; No. 14 the same; No. 15 the same; No. 16 replies that Kadir Talookdar has got him into the scrape through enmity, and that he knows nothing of the case; No. 17 defends himself by an *alibi*; No. 18 the same. No. 19, Neelkanth Roy, replies, that from the 5th Poos to the 4th Magh last, he never left Burrisaul and that his witnesses will prove the fact; that on the 27th Poos he gave a *vakalutnama* in the sudder moon-siff's court, empowering Rutten Kishen Mujmoodar and two others to act for him in a certain case, and that document would prove his presence here on the 10th January, 27th Poos last; that on the 27th and 28th Poos, he acknowledged twelve *itilanas* issued upon him by the collector, which the collectory peadahs could prove; that there had been a quarrel between

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Rajib Lochun Singh, witness No. 1, Gowreenath Gangolee and others about the possession of a share of the howla of the former which they, after having a fight, had made up and brought in this false charge against him at the instigation of one Kadir and Doodoo Meah, the Ferazae.

"None of the allegations of the prisoners was borne out in my opinion by the numerous witnesses they produced for that purpose. Nothing could be more unsatisfactory than their evidence and the manner in which it was given, and where false witnesses can be had at all times and at small cost, it is impossible to allow any weight to oral exculpatory evidence, whereas in the present case, the strongest presumptive and circumstantial proof is diametrically opposed to it. Of the documentary proofs brought forward by Neelkanth Roy, it will be sufficient to state in the first place that out of the three vakeels appointed by the *vakalutnama* which he says that he filed in the sudder moonsiff's court on the 27th Poos (10th January,) one has deposed that he wrote his acceptance *kubool-shood* upon it in his own house on the evening of that day, and the other that he did the same in his own house at 7 P. M., where it has been brought to them by Radhanath Ghose and Chunderkanth Chuckerbutty, *mookhtar*, whilst the sudder moonsiff states and his *rozenamcha* proves that his court closed on that day at 4 P. M.; and *secondly*, that the date of the entry of the *vakalutnama* in the *Siaha Buhee* has been altered from the 13th to the 10th to help the fraud.

"The *itilanamas* on which he relies were issued by the collector on the 27th Poos (10th January) on Neelkanth Roy, his brothers and others, residents in the Mofussil, and were returned to the collectorate on the 16th and 17th idem, so that he may have acknowledged them on the last day as well as the first, or on any intermediate one. His signing his name and writing the 10th proves nothing save that he wished it to be thought that he signed them on that day.

"In a complicated case of this kind there must always be a great amount of contradictory and false evidence, and I believe that we should never come to a just conclusion if we excluded what was probable, because a witness may add what it is highly improbable that he should know, when men can easily be found to say anything, and when those who are on one side when the case is before the magistrate, are not unfrequently bought off by the opposite party before it comes to the sessions, and give conflicting statements in each court, where we can have little reliance on the thanna reports, and rarely know which side the darogah really took, how much of what the witnesses said before him has been recorded, or how much has been withheld; we must rest in a great measure on circumstantial evidence, and in this case, in addition to the general credibility of the witnesses

for the prosecution and the complete failure of the defence, it is undoubted that all the prisoners are servants and *ryots* of Neelkanth Roy, who is known to be a powerful and unscrupulous man from the many serious cases in which he has been implicated before, and it is impossible to believe that such an outrage as the one now reported could have been committed by his men without his orders.

"The jury found all the prisoners guilty of the crimes with which they were charged, and fully concurring in the verdict, I sentenced them accordingly."

Sentence passed by the lower court.—Nos. 1, 2 and 19, each, to be imprisoned for seven (7) years, with labor in irons, and Nos. 3 to 18, each, to six (6) years' imprisonment, with labor in irons.

Remarks by the Nizamut Adawlut.—(Present: Mr. R. H. Mytton).—"All the prisoners in this case except Nos. 7 and 8, have appealed.

"Bungsee Buddun { have been retained as counsel for { No. 3, Tiluck Chunder Gopt, and No. 4, Comal Kishen Kur.

"Messrs. Peterson, Waller, Norris, { Ditto for No. 19, Neelkanth Roy.

"Baboo Ramapersaud Roy and { Ditto for prosecutor and Sumbhoonath Pundit, } Government.

"The first remark that suggests itself is, that from the account of the occurrence given by the sessions judge, the homicide of Dhunaye Kazi clearly amounted to wilful murder.

"A body of men with arms, and in such numbers as to evince a determination to overcome all resistance, attack a man's house, with the object of illegally seizing one of the inmates. The other inmates oppose their entrance, as they had an unquestionable right to do, and one of them was speared and killed.

"The case is not unlike that of Lukikanth Chunder, page 622, of Nizamut Adawlut Reports for 1852, and that of Sachoo Sheikh, page 1278, Nizamut Adawlut Reports for 1851, in both of which this court held the offence to be wilful murder. It is astonishing that notwithstanding the Circular Order, No. 5, of volume 2, the magistrate should have committed for the lower grade only. The judge under the Circular Order, 14th November 1851, would have exercised a sound discretion in requiring the magistrate to amend his commitment before proceeding to trial.

"The charge in the English calendar is riot with homicide, &c., without defining the grade, and this omission has caused a similar omission in the judge's finding. However, the Bengalce

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charge is *shibah-i-amad* (culpable homicide,) and to that the prisoners have pleaded, and it is evident that of this grade of homicide the sessions court has convicted.

“ Treating it, therefore, as a case of riot with culpable homicide, the court, on perusal of the remarks of the sessions judge as to the proof against the instigator of the outrage, thought that it would be desirable before finally considering the appeal to have more direct evidence before them on the subject, and intimating to the pleaders that further evidence would be called for, drew out the following Resolution :—

“ ‘ The court having perused the papers connected with the case of Waris and others, observe that five of the prisoners made very circumstantial confessions to the police and that two of them repeated their admissions to the magistrate. It would be highly desirable to have the evidence of two, or, at all events, one of these persons, or other accomplices, in corroboration of that which has been taken.

“ ‘ They remark that riot with culpable homicide is not one of the crimes mentioned in Regulation X. of 1824, for conviction of principal offenders in which the courts are authorized to offer a pardon to accomplices in order to obtain their evidence. This court cannot, therefore, offer it in this case, but it is within the competence of Government, under Section VI. Regulation XIV. of 1810 to do so; and under Act XIX. of 1837, the evidence of persons so pardoned would be admissible. This course is in accordance with the concluding sentence of the remarks to the trial, *viz.*, Anees Sheikh *versus* Moneerooddeen and others, pages 1424 to 1431, of Nizamut Reports for 1851, decided 25th September of that year.

“ ‘ It is therefore ordered, that a copy of this Resolution, together with the proceedings, be sent to the sessions judge, with instructions to re-open the trial, and to furnish the magistrate with a copy of this Resolution in order that he may take the necessary steps for obtaining the desired evidence. Having done so, the sessions judge will take it and allow the prisoners to make any further defence they wish, he will then re-submit the trial for the orders of the court.

“ ‘ Until further orders the prisoners will be retained in *hajut*.’

“ Before they were issued, the counsel for the prisoners applied to be heard against the orders going out, and permission being given, they were heard on the 9th instant.

“ Mr. Peterson for Neelkanth Roy (prisoner No. 19) contended—
First,—“ That in an appealed case this court could not call for further evidence.

Secondly,—“ That pardon should not be offered to accomplices; that the only manner in which their evidence could be available would be on their own offer.

Thirdly,—"That the pardon must be given before trial; and that after conviction, evidence of an accomplice cannot be taken in the same case against the partners in crime.

Fourthly,—"That Act XIX. of 1837, was only the extension of an English law to do away with a supposed inability of a convicted felon to give evidence; but that a convicted accomplice could not, under that law, be admitted to give evidence against others for the same identical crime.

Fifthly,—"That under Regulation X. of 1824, tender of pardon to principals on condition of giving evidence is forbidden; and that there are none but principals in this case to whom it could be tendered.

Sixthly,—"That a conditional pardon would have the effect of unduly inducing the person to whom it is tendered to give evidence tending to conviction.

"Mr. Waller followed for the same prisoner, but confined himself chiefly to pleading that a resolution to take further evidence should not be made without hearing argument.

"Bahoo Ramapersaud Roy on the part of Government and the private prosecutor, supported Mr. Waller on the last noted point, and also pleaded for the cancelment of the Resolution on the ground of impolicy, as the accomplices are dependants of the instigator of the offence, and are not likely to give evidence against him, and because he was prepared to show that there is sufficient evidence on the record to support the conviction.

"As both parties desired the cancelment of the Resolution, the court considered it proper to accede to their wishes, but to prevent misapprehension, it is necessary to put on record the reasons for considering all the pleas urged to be untenable. As regards Mr. Peterson's first plea, by Section LXXIII. Regulation IX. of 1793, this court exercises all the powers of the late Nizamut Court under the Nazim at Moorshedabad. It may be presumed that, under that despotic rule, there was no bar to calling for further evidence. Be that as it may, by Section XXIV. Regulation IX. of 1807, it is competent to this court to call for the proceedings of any court of circuit (now sessions court) and to pass such orders thereon as it may deem just and proper. It has always exercised the power of calling for further evidence in all classes of trials coming before it. Its former powers in appealed cases are only restricted by Act XXXI. of 1841 and Act XXX. of 1848, against enhancing punishment or doing anything so as to enhance punishment in such cases. To see that it has continued to exercise the privilege of directing further evidence in appealed cases to be taken since the passing of the above Acts, reference may be had to page 81, of Nizamut Adawlut Reports for January, and page 273, of those for February 1852.

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Secondly,—"The very words of Regulation X. of 1824, show that the magistrate is *to tender* pardon and the sessions court, or Nizamut Adawlut, to instruct him *to tender* pardon. They are not to wait for an offer. Under the spirit of this law the resolution in question was drawn out.

Thirdly and Fourthly,—"That pardon may be tendered after trial, and that evidence of a person convicted may be received against or in favor of accomplices in the same crime, is evident from the precedent in vol. 4, page 238, and Constructions Nos. 1117 and 1173, quoted at page 75 of Beaufort's Digest, para 394.

Fifthly,—"Section IV. Regulation X. of 1824, shows that the word principal is not used in this law in its English law acceptation, but merely as a comparative adjective. The caution is not to tender pardon to the *principal offenders*, those in fact whose guilt is believed to be the deepest.

Sixthly,—"The last objection of Mr. Peterson, applies generally to the admission as witnesses on conditional pardon of any accomplices, whether under our system or (it is believed,) the English. In a note to page 331 of Mr. Christian's edition of Blackstone, it is mentioned that upon a trial at York, before Mr. Justice Buller, the accomplice, who had been admitted as a witness, denied in his evidence what he had before confessed; upon which the judge ordered an indictment against him for the same crime, and upon his previous confession and other proof he was convicted and executed. This shows that the penalty of the law is kept hanging over an accomplice admitted to give evidence in England, and that on his recusancy it is inflicted. The practice is no doubt open to the objection made by Mr. Peterson; but the securing conviction of offenders is a paramount consideration, and it is found in practice to be impossible to obtain any other evidence than that of accomplices in many atrocious cases. As regards Mr. Waller's address, I can see no legal impediment or valid objection to the court *propria motu*, ordering further evidence to be taken before hearing the arguments of counsel for the prisoners. They, the pleaders, were informed of the order, they received a copy of it on application, and were heard against it, immediately they expressed a wish to be so. On the 11th instant, the case came on for hearing, but Baboo Bungsee Buddun Mitter being absent and Mr. Norris only supplied with a *vakalatnama* at the hearing, the arguments were confined to the case as it affects Neelkanth Roy.

"Mr. Peterson contended:—*First*,—"That supposing the fact of sending a party to seize Rajib Lochun Singh to be proved against his client, he was not liable to be punished for any riot or homicide the party may have committed; and in support of his position, and illustrative of his argument, he quoted from Roscoe and Chitty.

Secondly,—"That his client was in no way interested in the howla of Rajib Lochun Singh. On the contrary, that it had been bought at auction by Gowreenath Gangolee, and that one Doorga Dass on the part of Gowreenath had, prior to this occurrence, filed a petition in the magistrate's court, alleging that Neelkanth Roy was about to assist Rajib Lochun against him. Moreover, that if the wish of Neelkanth was as alleged to get possession of the howla, how could the seizure of Rajib Lochun effect that ?

Thirdly,—"That the evidence to the actual occurrence of the riot and death of Dhunaye was unsatisfactory and suspicious ; why was not Dhunaye's wife examined ?

Lastly,—"That there was actually no credible evidence, to implicate his client.

" Baboo Kishen Kishore Ghose followed on the same side, contending against the probability of the riot having been made by his client's dependants, and endeavouring to lead the court to suppose that, as alleged in the defence of some of the prisoners, a disturbance had taken place between Rajib Lochun's peons and the dependants of Gowreenath, and that they had after the fight made friends and combined to bring this charge against his client. He commented at considerable length on discrepancies in the evidence.

" Baboo Ramapersaud Roy, in answer, submitted to the court that the prisoner had been found guilty of instigating the riot, &c., not only by the judge who sat on the trial, but by three respectable assessors, his own countrymen ; that the parties who committed the offence were servants of Neelkanth Roy, as evidenced by his producing Tiluckchunder Gopt and Kamal Kishen Kur ; that twelve persons have given evidence that he went to Nulcolah, *i. e.*, half a *ghurry's* journey from the spot, the day before the riot ; and that two of these witnesses are his own ryots ; that the confessions establish the fact of Dhunaye's death, and that the admission of five persons that they acted under Neelkanth's orders, and the palpable falsity of the defence set up, are circumstances which should not be overlooked.

" Mr. Norris briefly replied, noticing that the report of the occurrence, although dated the 11th, did not reach the magistrate before the 15th, although the distance was only two days' journey, and that it might have been antedated, which would allow more than one day for the collusion suggested.

" This day, (September 14th,) Mr. Norris took up the appeal of Tiluckchunder Gopt and Kamal Kishen Kur, and repeating the arguments in favor of the supposition that the disturbance which took place was an affray between the dependants of Gowreenath Gangolee and Rajib Lochun Singh, and urging that fifty or sixty witnesses had deposed to this effect, pointed out

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discrepancies in the prosecutor's and his witnesses' statements, and suggested that the whole had been got up by Doodoo Meah. He also submitted that several cases had been inquired into by the same darogah, Shibnath Ghose; that the circumstances of each were similar; and that some had been considered false, instancing that of Hurchunder Goo and others decided by this court on the 8th of June.

"On the part of the others it is pleaded generally, that the disturbance was created by Gowreenath Gangolee and Rajib Lochun, and that they colluded subsequently. Almost all likewise plead *alibis* which are undeserving of notice.

"Waris (No. 1) states, that his confession is fictitious, and in proof appeals to his signature to his defence in the magistrate's and session's courts, whereas his so-called confession bears only a mark,

"The first point to be disposed of is, whether this outrage was as alleged committed by the dependants of Neelkanth Roy or by others.

"There is no satisfactory evidence as to the connexion of Neelkanth Roy with the howla of Rajib Lochun Singh, but it is possible that he may have had an eye to it, and was at one time playing for it,—*first*, through Rajib Lochun, and *lastly*, through Gowreenath, and was incensed at the former's going to collect the rents. Be that as it may, I see no reason to question the genuineness of the date of the darogah's first report, *vis.*, 11th January, the very day of the occurrence. The date alluded to by Mr. Norris is not that of its receipt by the magistrate, but of the hearing. Now it is quite incredible that two parties should have a severe fight, two of the party being severely wounded; that in one day their passions should subside, and that they should combine and influence a whole village and every soul concerned to charge another party, in no way interested in the subject of dispute, and against whom they had no enmity. The witnesses who supported the statement did not come forward till long after the occurrence. I reject the supposition as *posterosus*.

"There is an immense mass of evidence to the fact that the riot was committed by the prisoners, the dependants of Neelkanth Roy, and it is corroborated by the confessions of five of the party.

"Then as to the death of a person being caused; Dhunaye Kazi, is not alleged to be a fictitious person. The evidence to his being wounded and carried off is distinct, and this is also corroborated by the confessions. It is now eight months from the occurrence, and he has not made his appearance. The presumption is that he is dead.

"Having, therefore, determined that the case is not fictitious, that a party of Neelkanth Roy's servants and others committed

the outrage charged, I come to the consideration of the count against him personally as instigating and being an accessory before the fact.

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"On the first point suggested by Mr. Peterson, the evidence for the prosecution, states the object of Neelkanth Roy to have been the seizure of Rajib Lochun, and the breaking of his cutcherry. Supposing there to be proof of his instigating a party to this, can he be held responsible for a homicide committed in prosecution of those objects by the party sent ?

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"I had occasion on the trial of Oochubanund Das, in March last, (*vide* Nizamut Reports, page 419,) to consider this question of principle. I could not find any discussion of the question in any of the authorities or precedents of this court, and I looked to the rule of English law, and that adopted by the enlightened framers of the new Criminal Code for England. The rule in English law* is that if several persons be united in a criminal purpose, and any of them shall do any criminal act beyond the scope of such design, such of them as are not privy or assenting to the criminal act done shall not be responsible for it.

"This is amplified in the Criminal Code alluded to, and the question of procuring or instigating is more directly treated of thus—

"A person is guilty of procuring or promoting when the act done and the means used vary from that encouraged, provided the object intended, and the crime perpetrated, be substantially the same, *or if the act done be a probable consequence of that encouraged.*† In the absence of any rule in our system of law I adopt this, and now to apply it to this case. The immense number of persons combined, their arms, and their immediate acts, show that to overcome all resistance at any risk, was not beyond the scope of their design, but a part of it, and the person who deputed such a multitude with arms is answerable as an instigator or promoter of the riot and homicide which occurred, because they were a probable consequence of sending a large body so armed to seize a person illegally.

"As to Neelkanth having deputed the party to seize Rajib Lochun, there are presumptions that he did so. It is unlikely that so large a party could be got together without a large expenditure. He went to the neighbourhood the day before. The persons concerned are most of them his servants. Those who confess participation state that they went under his orders. But these presumptions do not amount to proof. The evidence on which the conviction has been had is not, in my opinion, legally sufficient to sustain it. Putting aside that of Ramjyoon

* *Vide* Russell on Crime, pages 29 and 30.

† Clause 2, Section IV.

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Dhobee, whom the sessions judge discredits, and of Joora Gazy, who added the most material part of what he said in the sessions to what he had said before the magistrate, it amounts only to proof of his having been the evening previously at Nulcolah, half a *ghurry* from the place of occurrence, in the company of Tiluckhunder Gopt who is proved to have led the rioting party and others of his servants. Two of his *ryots*, Dhun Gazy and Orung Shah also depose that they had been summoned by Balram Peadah to Baoful, and asked at that place by Neelkanth, two or three days previous to the occurrence, to go, one says with him, the other with his *gomashas*, to seize Rajib Lochun and take possession of his cutcherry. But of these, one, *i. e.*, Dhun Gazy, gave evidence short of this in the magistrate's court. He then stated that Bulram Panda came to his house and said that the Baboo's *gomashas* were going to take possession of Rajib Lochun's cutcherry, and that he must accompany. He says not a word of any meeting with Neelkanth Roy himself. This evidence is not to be relied on. In short, the most that can be said of the evidence, and facts established, are, that they raise a strong suspicion that Neelkanth Roy deputed the tumultuous array who actually went and committed the outrage.

"Baboo Ramapersaud Roy has urged that if instigation be not proved, privacy is. Now privacy is the concealment of something which ought to be revealed by the person. No such concealment has been put in evidence at the trial.

"This prisoner must be released.

"As regards the other prisoners, the evidence is, as I am sorry to say it almost invariably is in such cases, far from what could be desired as a ground for decision on the fact of presence.

"I reject *in toto* the evidence of witnesses, such as Rajib Lochun (No. 1), Summeerooddeen (No. 7), Charroo (No. 18), who, on the first inquiry by the darogah, pretended to have recognized fifty or sixty of the attacking party. No person could do such a thing. *Secondly*, I cannot accept as trustworthy the sweeping assertions of witnesses who state at the trial, 'I recognized all the prisoners here among the rioters.' I can only admit their evidence as good against the persons they named or designated in some particular manner, at an *early* stage of the inquiry in the Mofussil. To this extent, and no further, it may be accepted against those who have throughout denied their presence.

"Acting on this principle, I deem it proper that Massod, Kulleem, son of Massod, and Bulram Putnee should be released.

"The fact of the signature of Waris to his confession being a mere mark, while that to his defence in the magistrate's court is well-written by himself, is true. I do not, however, consider that a sufficient reason to believe the confession fictitious, having in my own experience met with men sufficiently crafty to put

only a mark to confessions before myself as magistrate and then sign their own names in the sessions, raising a similar plea. The confession is circumstantial, and is not such a statement as would be concocted to support the prior depositions.

"No. 19, Neelkanth Roy, No. 15, Massod, No. 12, Kulleem, son of Massod, and No. 18 Bulram Putnee, will be released. The appeals of the other prisoners are rejected."

PRESENT:

SIR R. BARLOW, BART., *Judge.*

GOVERNMENT

versus

PERSIDHNARAIN SINGH (No. 5) AND SHEOSUHYE SINGH (No. 6).

CRIME CHARGED.—Affray attended with culpable homicide of Kunhye Gowala, on the part of first party.

CRIME ESTABLISHED.—Riot attended with culpable homicide of Kunhye Gowala, deceased.

Committing Officer, Mr. F. Tucker, magistrate of Tirhoot.

Tried before the Hon'ble Robert Forbes, sessions judge of Tirhoot, on the 30th June 1852.

Remarks by the sessions judge.—"This case was committed as one of 'affray' between two parties, 'attended with the culpable homicide of one Kunhye Gowala,' but it did not on trial in this court turn out to be such. The case appears to have originated in disputes for the possession of mouza Hursingpore, after the death of its former proprietors, Musst. Rajbunsee and Phool Koonwur, between the prisoner Bulwunt Singh (acquitted) on the one hand and the prisoners Persidhnarain Singh and Sheosuhye Singh and Modnarain Singh (not apprehended) on the other.

"The following are the circumstances of the case as gathered from the record and evidence:—

"On the 12th January last, the deceased, Kunhye Gowala, a Berahil of the prisoner Bulwunt Singh's, not long before he died deposed before the jemadar of Chowkey Tajpore, in the village of Patteepore, (distant about twelve miles from Hursingpore, the scene of the occurrence which led to this trial,) where the jemadar was engaged in investigating another case, and whither the deceased was taken after having first been to the chowkey, where he did not find the jemadar; that on the preceding day, *i. e.*, Sunday, the 11th January last, or 4th Magh 1259 F. S., he, (Kunhye Gowala) was proceeding about 3 P. M. to mouza Hursingpore to get some *ryots*, with a view to collect their rents,

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The prisoners were acquitted, the deceased's alleged dying declaration inculcating them not being considered worthy of credit.

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at which time the prisoners Persidhnarain Singh and Modnarain Singh were sitting with a collection of rioters at the Hursingapore cutcherry. He asked him (Kunhye Gowalah) where he was going, to which he replied that he was going to fetch *ryots* to pay their rents. On this the prisoner Persidhnarain Singh and Modnarain Singh, by order of the prisoner Sheosuhye Singh, struck him with their swords, *viz.*, Persidhnarain Singh on the right breast up to the shoulder, and above the elbow under the shoulder, and also on the back, and Modnarain Singh on the left shoulder and back, which rendered him senseless. He cited as his witnesses Juggurnath Koorintee, (eye-witness No. 5,) and Hurchurn Koormee, (eye-witness No. 6,) and praying that inquiry might be instituted, added that he could not possibly live, but would certainly die in the course of a few *ghurries*. This deposition of the dying man was committed to writing by one Hurdyal Singh, a *tayid* or assistant of the jemadar, and both those persons (summoned by this court) attested the deponent's above statement. Kunhye Gowala died the same night, and his body having been sent into the station was examined by the civil surgeon and reported on by that officer on the 14th January. An entry, dated the 12th, is also found in the jemadar's *roznamchah* or diary (inspected in this court) giving the substance of the deceased's above deposition.

"The record shows that on the 12th January, a petition was presented to the magistrate by or in the name of one Kurreem Buksh, calling himself and others named therein 'servants of ' Baboo Persidhnarain Singh, &c.,' to the effect that after midday of the 11th, or day preceding, (being the same date as that stated by the deceased Kunhye Gowala,) Bulwunt Singh and between two hundred and three hundred rioters came to the cutcherry, armed with swords, *gundasas*, *lattees* and clubs, and struck and wounded him, (petitioner,) Roushun Roy, Debee Roy, Bochye Gowala, and Baboo Persidhnarain himself with swords and *lattees* so severely that they were not in a state to be at once sent in without conveyances, but would come in afterwards, a separate list of witnesses being also promised. On this an order was passed to the two thannadars of Dulsing Serai and Nagurbussee to investigate the case jointly, and the petitioner Kurreem Buksh was sent to the medical officer for examination and report on the injuries said to have been received by him, and the civil surgeon's report of the same is filed with the record. The petitioner Kurreem Buksh was also ordered to attend the darogah's investigation in the Mofussil. Some delay, however, having occurred in those officers commencing their inquiries, apparently because Kurreem Buksh failed to attend, the magistrate deputed his own nazir to investigate the case, who after taking the depositions of the persons sent up as eye-witnesses for the prosecution, and of

many residents of surrounding mouzas, sent in his final report convicting the prisoners (with the exception of the prisoner Sheosulhye and Modnarain Singh) of riotously assembling and throwing bricks into the cutcherry with mutual assault and striking with swords, in which Kunhye Gowala, being wounded, met his death. It was not shown that the petitioner Kurreem Buksh ever appeared before the darogah or nazir, or indeed that he at all appeared from the beginning to the end of this case after petitioning in the foudaree court.

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" Nine persons were entered in the calendar as eye-witnesses, all of whom (with the exception of No. 1, Kunhye Pasban, reported sick and absent,) attended and gave evidence in this court. Sookun Chowkeedar (No. 2), Poorun Sahoo (No. 3), and Durshun Pasban (No. 4), not cited by either party, but who had been first sent in as witnesses by the nazir, deposed to seeing, on the day of the occurrence, an assembly of near or about four hundred rioters, headed by the prisoner Bulwunt Singh, near the cutcherry, who began to throw bricks or bits of pots into the cutcherry, upon which Pursidhnarain detamped through a window in a northerly direction, after which the rioters entered the cutcherry, and on Kurreem Buksh, a servant of Persidhnarain Singh's, remonstrating, the deceased Kunhye Gowala aimed a blow at Kurreem Buksh with a *gundasa* which the latter ward off with his hand, on which Kurreem Buksh twice struck Kunhye Gowala with a sword, one in the front and one in the back of the shoulder.

" The witnesses Juggernath Koormee (No. 5) and Hurchurn Koormee (No. 6), named by the deceased in his dying declaration before the jemadar, and Sheodyal Jha, (No. 7,) named by the two preceding witnesses, attest the statement of the deceased as to the riotous assembly on the part of the prisoners Persidhnarain and Sheosulhye Singh, the altercation with the deceased in regard to the latter's being about to fetch some *ryots*, and the striking of the deceased each two blows by the prisoner Persidhnarain and Modnarain Singh, by the order of the prisoner Sheosulhye Singh, the only difference of any importance between their statements and that of the deceased being that the latter did not mention the number of blows each of the prisoners inflicted on him.

" The other two eye-witnesses, Mahomed Buksh (No. 8) and Girdharee Koormee (No. 9), give similar evidence to witnesses Nos. 2, 3 and 4, excepting that they did not depose to seeing the deceased Kunhye Gowala wound Kurreem Buksh.

" Of seven witnesses entered as circumstantial evidence in the calendar, the first six (with the exception of Chuttoo Miah, burkundauz, No. 5,) depose from hearsay in support of the testimony of the eye-witnesses Nos. 2, 3 and 4; Chuttoo Miah, burkundauz, whose evidence was one string of contradictions and

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who had evidently been bribed or tutored, deposed to having seen from a distance a great collection of rioters, bricks and broken pots inside the cutcherry, a broken palkee and four persons on the part of Persidhnarain Singh lying senseless inside the cutcherry, one person, *viz.*, the deceased, Kunhye Gowala, on the part of Bulwunt Singh, lying wounded and senseless at or near the door of one Gunesh Dutt Misser, having one wound on the back, one on the loins, and one on the right shoulder, who on his (the witness) asking, told him that Kurreem Buksh had wounded him.

"Witness No. 7, Dhumput Gowala, (son of the deceased Kunhye Gowala,) deposed to having heard that his father had been wounded by the prisoner Persidhnarain Singh and Modnarain Singh by order of the prisoner Sheosuhye Singh and of two other witnesses summoned by this court, the above Gunesh Dutt Misser and Meher Lall (putwaree of Hursingpore,) the former deposed to having seen the riotous assembly on the part of prisoner Sheosuhye Singh, and having heard that the prisoner Persidhnarain Singh and Modnarain Singh had struck the deceased Kunhye Gowala by order of the prisoner Sheosuhye Singh. The latter also deposed to having seen the rioters collected on the same side, and to seeing the prisoner Persidhnarain Singh, by order of the prisoner Sheosuhye Singh, rushing on the deceased Kunhye Gowala with a drawn sword, at which time he (witness,) decamped, and to afterwards seeing the deceased lying wounded in a field, who on his (witness) asking him said that Persidhnarain Singh and Modnarain Singh had wounded him by order of the prisoner Sheosuhye Singh.

"The medical officer's report on the wounds exhibited on the body of the deceased Kunhye Gowala, and to which effect he deposed in this court was, that 'he found a severe incised wound on the right shoulder, laying bare the joint, a second dividing the muscles at the back of the right arm, a third, fourth and fifth on the back, the effect of one cut, as they are in one line, and a severe incised wound on the left shoulder'. 'Death,' in his opinion, 'was caused by the hemorrhage consequent on the division of so many bloodvessels, the blows having been apparently inflicted by a sword or cutting instrument.'

"The report of the same officer in regard to the injuries received by the person who came forward as Kurreem Buksh was to his 'finding an incised wound on the right hand made with some cutting instrument, and contusions about the right leg and foot and under the right shoulder-blade, the effect of blows from *lattees*.'

"There is another report of the civil surgeon in regard to the injuries apparent on Bochoye Gowala and Roushun Singh, the former had a 'contusion over his left eye' and the latter

contusions 'about the body and limbs, all produced by blows 'from some heavy instrument.'

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"All four prisoners pleaded 'not guilty' both before the magistrate and in this court. September 16.

"The defence of the prisoner Bulwunt Singh, an *alibi*, being considered to be established by credible evidence, which he adduced in addition to the proof brought against him as well as the prisoner Buktour Roy not being deemed satisfactory or sufficient to convict them, both were acquitted and released.

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"The prisoner Persidhnarain Singh pleaded in his defence that when the rioters on the part of Bulwunt Singh and Doulut Singh came to the cutcherry and began to throw bricks and broken pots, some of which struck him (prisoner) on the foot, he ran away from them and came into Mozufferpore, to which effect his two witnesses, Rubbee Jha (No. 3) and Bhoojungga Jha (No. 4) (who both stated that they were going along the road), deposed, but their evidence, in the face of the dying declaration of the deceased Kunhye Gowala duly attested, and the other evidence adduced against him for the prosecution (the prisoner himself admitting that he was present when the riot began), was wholly insufficient to exculpate them."

"The prisoner Sheosuhye Singh pleaded an *alibi*, urging that he was at Mozufferpore before and on the date of the occurrence, after hearing of which from Kurreem Buksh he went on Wednesday the 7th of Magh to Hursingpore, where he heard from one Rambuksh Roy, Owdun Roy, Brijlal Roy and Rughoober Roy that the prisoner Bulwunt Singh and Doulut Singh had themselves wounded Kunhye Gowala with swords in front of the door of Gunesh Dutt Misser (summoned by this court) and though the prisoner cited several persons as witnesses to prove his *alibi* (to which effect they indeed deposed) yet as they were unable to allege any good reason for their remembering the circumstance of having seen the prisoner in Mozufferpore on particular days, their testimony, in opposition to that adduced for the prosecution, could not be allowed to weigh.

"The law officer in his *futwa*, considering the case not one of affray between two parties, but of riot attended with culpable homicide by one party and satisfactorily detailing at length his reasons for so judging, acquits the prisoners Bulwunt Singh and Buktour Roy, and convicting the prisoners Persidhnarain Singh and Sheosuhye Singh of riot attended with the culpable homicide of Kunhye Gowala, declares them liable to discretionary punishment by *tazeer*."

"In his dying declaration made before the jemadar on the day after the occurrence the deceased named the prisoners Persidhnarain Singh, Modnarain Singh and Sheosuhye Singh as those concerned in wounding him and no one else. The eye-wit-

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nesses too, then named by him, Nos. 5 and 6, and another, No. 8, named by the latter, establish his statement, his declaration having been duly attested both by the police officer before whom it was taken, and his assistant who committed it to writing. Those two persons having been summoned by this court, and an entry of the circumstance is also found in the jemadar's diary for that date.

"It is apparent on the other hand, that while three of the alleged eye-witnesses, Nos. 2, 3 and 4, whose testimony, exculpating the prisoners Persidhnarain and Sheosuhye Singh, would implicate their opponents, depose to their having seen 'Kurreeem Buksh' strike the deceased. The prisoner Sheosuhye has urged in his defence, his having heard and called witnesses to prove (to which effect they deposed) that the prisoner Bulwunt Singh and Doulut Singh themselves inflicted the wounds on the deceased Kunhye Gowala outside the house of one 'Gunesh Dutt Misser' (summoned as a witness by this court). In addition to the testimony of the latter person, disproving that statement, it is incredible that the deceased would, as the witnesses represent, unresistingly allow himself to be killed or his life to be endangered by the infliction of such severe sword wounds as the medical officer found on the body of the deceased merely to gratify Bulwunt Singh. It is clear too, that no one would in open daylight commit such a deed outside a house in a public place and in view of witnesses.

"I give no greater credit to the counter-statement of the alleged Kurreeem Buksh, whose sudden and mysterious disappearance after presenting his petition in the foudaree court, charging Bulwunt Singh and his party with having wounded him and others, and whose actual identity is matter of doubt, throws discredit on his story. I cannot, indeed, resist the conviction in my own mind, that the injuries found by the medical officer on the person of the party calling himself Kurreeem Buksh, and those stated to have been wounded with him, and which injuries were not found to be severe, were either self or purposely inflicted, and that the charge attempted to be brought against their opponents of having resorted to such a means of implicating their adversaries by themselves wounding the deceased recoils upon the convicted prisoners. It, moreover, appears that one of the above three eye-witnesses Sookun Chowkeedar (No. 2), who gave notice at the thanua on the day succeeding that of the occurrence of his having only *heard* of an assault having been made the day before, afterwards deposed as an *eye-witness* of the event first before the foudaree nazir, and afterwards before the magistrate and in this court.

"It is also observable, as remarked by the law officer, that only one of the prisoners, Sheosuhye Singh, has set up the at-

tempted defence of the deceased having been killed by Bulwunt Singh, which, had it been true would, it is reasonable to suppose, have been pleaded by both.

"Concurring with the law officer in the acquittal of the prisoners Bulwunt Singh and Buktour Roy, I also fully agree with him that the statement of the deceased is the only correct version of the affair or that is established. Discrediting, therefore, the stories by which it would be made to appear that the deceased came by his death in any other way than as he himself stated, by the hand of the prisoner Persidhnarain and Modnarain Singh, at the instigation of the prisoner Sheosuhye Singh. I also think with the law officer that none of the evidence brought forward to make the case out one of 'affray' on two sides is at all trustworthy. I accordingly acquiesce in his conviction of the two prisoners Persidhnarain and Sheosuhye Singh, of 'riot attended with culpable homicide'.

"Taking the above view, I think it is to be regretted that the case, which is a serious one, did not contain the higher charge of 'murder'. As it is, with reference to the wording of the indictment by which the main charge is not 'culpable homicide,' the prisoners cannot be convicted specifically of that crime, but only of the lesser one of 'riot attended with culpable homicide,' the case being involved in too much obscurity and doubt during the progress of the trial to bring it within the provisions of the court's most recent Circular, No. 70, of the 14th November last.

"Under these circumstances the prisoners have been convicted as above shown, and sentenced as stated in the foregoing column."

Sentence passed by the lower court.—Prisoner No. 5, to be imprisoned, with labor in irons, for the period of five (5) years. Prisoner No. 6, to be imprisoned, with labor without irons for four (4) years, and to pay a fine of Company's rupees one hundred (100) on or before the 20th July 1852, or, in default of payment, to labor until the fine be paid or the term of sentence expire.

Remarks by the Nizamut Adawlut.—(Present: Sir R. Barlow, Bart.)—"The prisoners were committed by the magistrate with Bulwunt Singh and Buktour Singh their opponents, on a charge of affray attended with culpable homicide of Kunhye Gowala. The court, on view of the Monthly Statements, observed that the charge should have been affray with murder. Having gone through the trial, I have no hesitation in saying that it should have been so framed against Bulwunt and Buktour Singh who were released by the sessions judge. The finding was against the prisoners, 'riot attended with culpable homicide.'

"But I differ altogether from the sessions judge as to the conviction of the prisoners.

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"There are, as the judge says, the names of nine eye-witnesses in the calendar.' Of these Nos. 1 to 4 were on the part of Government; Nos. 5 to 7 named on the part of Bulwunt Singh and Buktour Singh; Nos. 8 and 9 named by the prisoners. I postpone for the present my remarks on the evidence given by these witnesses; and will, in the first place, test what the sessions judge in his remarks on the trial in Statement No. 6, declares to be 'the only correct version of the affair, that is established,' viz., the dying declaration of the deceased.

"The witnesses to this document are Chooney Dobey, jemadar of the Tajpore *pharee*, Bussunt Lal, Sheboo and Sookun Chowkeedar examined in the sessions court, and Ruttoo in the magistrate's court only.

"Chooney Dobey deposed that deceased Kunhye was brought in a wounded state to him on the 12th January on a *charpoy*, a Lala accompanied him, who is the *putwaree* or servant of Bulwunt Singh. Hurdyal Singh, the jemadar's writer, wrote Kunhye Gowala's statement on oath at Putteepore, which place is six or seven *cos*s distant from Hursingpore, where the murder took place. Hursingpore is also two *cos*s distant from Tajpore *pharee*. The deposition of the wounded man was taken on the evening when one *pukur* remained. Bussunt Singh swore that Meher Lal, putwaree, caused the statement of Kunhye Gowala to be written before the jemadar at Putteepore. Witness does not remember even the contents of that statement. It was written in the morning at about one *pukur* of the day. *Question*.—'What did Kunhye say when Meher Lal caused his deposition to be taken?' *Answer*.—'So long as I was present, I did not hear Kunhye say anything: Kunhye was senseless and groaning, Meher Lal made the statement to Hurdyal.' *Question*.—'How do you know that Meher Lal made the statement on the part of Kunhye?' *Answer*.—'Meher spoke, from this I know it.' Witness closes his deposition by stating that he objected at first to attest Kunhye's declaration, but signed it because the jemadar said it was customary.

"Sheboo deposed—that in Magh Kunhye Gowala was brought to the jemadar of Tajpore *pharee*: he saw six wounds: a Lala wrote his, Kunhye's, statement. Witness does not remember its contents; people said it was Kunhye: they gave him some water and washed him, he then became sensible and spoke; a Lala caused it to be written. Kunhye spoke a little. *Question*.—'Was that which Kunhye said written down?' *Answer*.—'I was at a great distance, one or one and a half *luggees* distant. I did not attend.' *Question*.—'In the foudjaree court you distinctly said you did not hear Kunhye speak.' *Answer*.—'He spoke after he had taken some milk and water; he was at first senseless.'

"Sookun Chowkeedar, of Hursingpore, before the sessions court, on being questioned whether Kunhye gave his deposition before him, *swore that he could not say*. Meher Lal caused it to be taken at Putteepore. He was asked whether Kunhye's deposition was taken in the Mofussil by the police and answered he could not say; it was not taken before him.

"Ruttoo, examined in the fowjdaree court, only swore that *Kunhye was not sensible when he gave his deposition*: he was groaning; a *khaist* on his part, name unknown, caused his deposition to be given. *Kunhye said nothing*, nor was anything read before witness, the jemadar told him to be a witness: he asked what he was to witness; on this the jemadar said do not fear, it is customary. The gross neglect of the jemadar in taking his dying declaration not from the lips of the wounded man but through the interpretation of a third party, and that the *mookhtar* of Bulwunt Singh (released) merits the severest censure. The fact is proved by the witnesses to the declaration, though the jemadar and his assistant writer Hurdyal state Kunhye himself deposed.

"There are yet two witnesses to the dying declaration of Kunhye both examined in the sessions court to whom it is necessary to refer.

"Meher Lal present at Kunhye's dying declaration.—Witness took a wounded man to the Tajpore *pharee*, that man was Kunhye; he had been wounded with swords in several places; *witness is putwaree of Hursingpore*: he was in the cutcherry when Kunhye came for a *ryot* required by Bulwunt Singh; prisoner No. 6 ordered No. 5 and Modnarain to cut him down, they did so with their swords; he saw deceased at about two *ghurries* of the day remaining, in a field South of the cutcherry; took him up, gave him some water: when he saw prisoners Nos. 5 and 6 had cut him down, asked to be taken to the thanna, he could not move but with my assistance got to the village and asked for bearers; he was taken to Tajpore, thence to the jemadar at Putteepore. • Four people were called from the village. The jemadar desired witness to sit aside and said he would take Kunhye's statement and did so. *Witness went two luggees off*. Witness was told to sign Kunhye's name, which he did accordingly. *Witness has been fifteen years in Bulwunt Singh's service at Hursingpore*.

"Hurdyal Singh, writer of the declaration, deposes he wrote it, Kunhye was then *sensible*: *he gave answers as questions were put to him, and witness wrote them down*—no one assisted Kunhye in his deposition; he spoke for himself, Meher Lal signed for him.

"Such is the evidence to the dying declaration of Kunhye. Anything more unsatisfactory I never read, the discrepancies

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and improbabilities, I had almost said impossibilities, set forth, deprive the declaration, and the evidence in support of it, of all credit. But a burkundauz, Chuttoo Miah, has given very important evidence; allusion is made to it on the report of the trial. Hearing of the disturbance he immediately proceeded to the spot, he there saw Kunhye wounded with swords in four places. Kunhye at once said that one Kurreem had wounded him, *he named no one else.* Witness took care of Kunhye during that night, and on the morning went himself to the thanna to give information, but the darogah did not take his deposition. This evidence is said to be 'one string of contradictions,' but it is supported by that of four witnesses on the part of the Government, Sookun Chowkeedar, Kunhye Chowkeedar, Poorun Sahoo and Dursun Pasbans, who have all deposed that they saw Kunhye entering the cutcherry when *Kurreem cut him down.* They have also sworn that neither prisoner No. 6 nor Modnarain were at the cutcherry, adding that No. 5 was there but ran off and did nothing. On the other hand these witnesses all depose that Bulwunt Singh and others with two or three hundred men attacked the Hursingpore cutcherry, which was in the possession of the prisoners, and that Kunhye was then and there so severely wounded that he died in consequence. It is clear also from the proceedings of the foudaree court and from the report sent to the magistrate by the police that the prisoners were in possession and had been in possession of the property since Raj Bunsee's death. If then their cutcherry was attacked by an armed body of men they were justified in defending themselves and ought not to have been committed to the sessions court. The attack of Bulwunt Singh which led to the results referred to was unjustifiable; he indeed was obnoxious to the charge of riot attended with murder and wounding, but he has been released by the sessions judge.

"I have thought it necessary to record an analysis of the above evidence, as the Government pleaders for the prosecution insisted strongly upon the force of it. In my judgment it is valueless.

"The prisoners are acquitted and must be immediately released."

PRESENT :

A. J. M. MILLS, Esq., *Officiating Judge.*

GOVERNMENT

versus

MOHESH CHUNDER SIRCAR.

CRIME CHARGED.—Perjury, in having, on the 27th March 1852, corresponding with the 15th Cheyt 1258, intentionally and deliberately deposed, under a solemn declaration taken instead of an oath, before the joint magistrate of Khoolea, that Lall Mahomed confessed to have taken a part in wounding and forcibly taking money from Praukristo Mundul, and that the confession was made by the said Lall Mahomed and written down by the jemadar's buxshce in his presence, and after hearing it read over to the prisoner that he signed his name as a witness to it; and in having, on the 26th of May 1852, corresponding with the 14th Jeyt 1259, again intentionally and deliberately deposed, under a solemn declaration taken instead of an oath, before the judge of Jessore, that on the 14th or 15th Cheyt, a burkundauz of the Nyabad thauna brought him to the jemadar, where he saw Lall Mahomed sitting near the jemadar's buxshce, and that the latter read a confession to him, which he said had been made by Lall Mahomed, and asked him to sign his name as a witness to it, which he did; but that the confession was not made by Lall Mahomed in his presence, such statements being contradictory of each other on a point material to the issue of the case.

CRIME ESTABLISHED.—Perjury.

Committing Officer, Mr. H. Rose, joint magistrate of Khoolea, zillah Jessore.

Tried before Mr. R. M. Skinner, sessions judge of Jessore, on the 10th July 1852.

Remarks by the sessions judge.—“The evidence for the prosecution as well as the conflicting depositions of the prisoner before the joint magistrate and the sessions judge on the occasions noticed in the calendar, prove the perjury.

“The prisoner pleaded ‘not guilty.’

“The jury unanimously pronounce him guilty of the crime. In this verdict I coincide, and accordingly sentence the prisoner to three (3) years’ imprisonment with labor in irons.”

Remarks by the Nizamut Adawlut.—(Present: Mr. A. J. M. Mills.)—“The perjury consists in the prisoner deposing before the magistrate, that he was present when the confession of Lall Mahomed was taken down in writing by the police officer, and that he attested it as a witness, and in contradiction thereto

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The prisoner was acquitted of perjury, notwithstanding the apparent contradiction of his two depositions.

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swearing, on the trial of the said Lall Mahomed, that he was seized by the police and brought to the place where Lall Mahomed was sitting, and that the confession, which had been previously made, was read over to the prisoner, Lall Mahomed, and he was asked to attest it, which he did. There is nothing to show which of the statements was the false one, but judging from the circumstances of the case the latter is most consistent with probability.

“Not a single question was put by the magistrate. He did not interrogate the witness as to whether the confession was wholly or partly made by the party confessing in his presence and whether it was freely and voluntarily made. The examination was of the most meagre kind, and it appears to me very doubtful what was the true sense of the prisoner's words when he stated the confession was made before him. The prisoner does not, as I understand his deposition before the sessions judge, deny that Lall Mahomed admitted the confession when it was read over to him, and that he, the prisoner, attested it, and further there is nothing on the record to show that the prisoner swore falsely with a corrupt and deliberate intention, that is, with the view of screening Lall Mahomed, who was convicted, from justice. The prisoner's depositions are apparently contradictory, but it is by no means clear that the prisoner swore to a direct and unequivocal falsehood. I therefore acquit him and direct his release.

“The sessions judge will call the magistrate's attention to the superficial manner in which the examination of the witnesses to the confessions before the police was conducted, and desire him to question witnesses on this most important point more closely and carefully.”

PRESENT :

A. J. M. MILLS, Esq., *Officiating Judge.*

GOVERNMENT, ON THE PROSECUTION OF SHEIKH ADOO
AND OTHERS

versus

RADHA PATUR.

CRIME CHARGED.—IN CASE No. 2.—1st count, wilful murder of Sheikh Adoo Khan; 2nd count, riotously and illegally assembling, attacking *haut* Sumbhoogunge, killing Sheikh Adoo Khan, severely wounding Sheikh Soomeer, and committing arson. IN CASE No. 3.—Illegally assembling and attacking Nalteabaree *haut*. IN CASE No. 4.—Assaulting the prosecutor and forcibly taking away his load of onions. IN CASE No. 6.—Assaulting the prosecutor and forcibly taking away his load of tobacco.

CRIME ESTABLISHED.—IN CASE No. 2.—Culpable homicide of Adoo Khan and riotously attacking *haut* Sumbhoogunge, in which Sheikh Soomeer was wounded and arson committed. IN CASE No. 3.—Illegally assembling and attacking Nalteabaree *haut*. IN CASE No. 4.—Assaulting the prosecutor and forcibly taking his onions. IN CASE No. 6.—Assaulting the prosecutor and forcibly taking away his tobacco.

Committing Officer, Mr. A. Abercrombie, assistant, exercising the powers of joint magistrate at Jumalpoore, zillah Mymensing.

Tried before Mr. R. E. Cunliffe, sessions judge of Mymensing, on the 12th July 1852.

Remarks by the sessions judge.—IN CASE No. 2.—“From the evidence for the prosecution, it appears that there had been disputes between Chunderkanth Talookdar, proprietor of *haut* Sumbhoogunge and Taramonee Chowdrain, proprietor of *haut* Juggutgunge, the latter alleged to be the new one and set up on the same day as the former, which is separated by a small *nullah*, and on the day in question a body of armed men crossed over from Sumbhoogunge, headed by No. 12, who, it is alleged, by order of No. 13, (acquitted,) and No. 14, (referred to the Nizamut Adawlut,) wounded the deceased, who was brought into the station and died in hospital, and also wounded Sheikh Soomeer, who appears to have colluded with the other party, as he is not now forthcoming; at the same time, one of the shops was set fire to and burnt. The evidence of the civil surgeon shows that the death of Adoo Khan was caused by the injuries he had received, and also that Sheikh Soomeer had received two penetrating wounds which had passed through the arm. The prisoner, a tall and powerful man, denied the charge, and alleged he had

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The consolidated sentence passed upon the prisoner by the sessions judge, on conviction of several lawless acts in resisting the establishment of a rival *haut*, affirmed on appeal.

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been falsely charged, because he had been Taramonee Chowdrain's *ryot*, whose land, however, he had left two years before, and that he was ill all Magh. From the evidence of his witnesses he appears to have left her land as stated, but they knew not of his having been ill, and from other cases, in which he has been convicted, trifling as they are, and which the officiating magistrate might have disposed of himself, it would appear that he has before been employed by her when new *hauts* are set up and disputes probable. The *fulwa* of the law officer convicts the prisoner of culpable homicide of Adoo Khan and riotously attacking *haut* Sumbhoogunge, in which Sheikh Someer was wounded and arson committed, in which I concurred.—IN CASE No. 3.—From the evidence of the prosecutor and the eye-witnesses it appears that disputes existed between Gopeemolun Mullick, owner of *haut* Naltecabaree and Taramonee Chowdrain, owner of Cheetpara *haut*, (separated from the other by a small nullah) from the *haut* days being the same, and that on the day in question the prisoner and a body of men came from Cheetpara *haut* into Naltecabaree, came into it, plundered and set fire to it. The joint magistrate, however, has not committed on a charge of plunder and arson, not crediting that part of the complaint, and accordingly the prisoner has only been convicted in concurrence with the law officer of the crime charged. His defence was a denial of the charge and that he had been charged because he had before been a *ryot* of Taramonee Chowdrain, and named witnesses to prove that he had left her land two years before, who gave evidence to that effect, which cannot clear the prisoner. IN CASE No. 4.—From the evidence of the prosecutor and the eye-witnesses it is proved the prisoner and others seized the prosecutor, and carried off his onions, because he would not go to their *haut*. The defence is the same as in the preceding case. The *fulwa* of the law officer convicts the prisoner of the crime charged, in which I concurred. IN CASE No. 6.—From the evidence of the prosecutor and eye-witnesses, it is proved that the prisoner and others stopped the prosecutor as he was going to Naltecabaree *haut*, and because he refused to go to Cheetpara *haut*, carried off the tobacco he was taking to market. The defence was the same as in case No. 4. The *fulwa* of the law officer convicts the prisoner of the crime charged, in which I concurred, and a consolidated sentence has been passed for all the cases in which the prisoner has been convicted.”

Sentence passed by the lower court.—Sentenced in the four cases, to be imprisoned, with labor in irons, for the period of seven (7) years.

Remarks by the Nizamut Adawlut.—(Present: Mr. A. J. M. Mills.)—“ It appears from the record that there had long existed

disputes between the proprietors of the two rival *hauts*, which were merely separated from each other by a nullah, and were held on the same day. There are four cases, which have sprung out of this quarrel against the prisoner, and it will be convenient to notice them in the order of occurrence.

"No. 5 of the calendar, Sheikh Adoo *versus* Radha Patur.—This case occurred on the 27th of December 1850.

"The prisoner is charged with assaulting the prosecutor, and carrying off his load of onions. The prosecutor was going to the rival *haut*, and was maltreated by the prisoner, because he refused to take his goods for sale to the *haut* of his employer. The prisoner eluded apprehension, though active search was made for him, until the 26th of March 1852, when he was arrested on the charge contained in the fourth case. The evidence to his assaulting the prosecutor is distinct, and I agree with the sessions judge in convicting the prisoner.

"No. 7 of the calendar, Sheikh Kanthoo *versus* Radha Patur.—This case occurred also on the 27th of December 1850. The prosecutor was assaulted for a like reason by the prisoner and his associates. The prisoner's guilt is clearly established.

"No. 4 of the calendar, Kishnopersaud Deb *versus* Radha Patur.—The third case, that of illegally assembling and attacking the Naltecabaree *haut*, occurred on the 1st of January 1851. It appears that a body of armed men, headed by the prisoner, attacked the rival *haut* at night. Houses were burnt, shops plundered, and other violence committed; but as the evidence to these acts was not satisfactory, they have not been charged against the prisoner. Again, active steps were taken to arrest the prisoner, but without success.

"The witnesses at the time deposed to his identity and at the trial they have adhered to their former statements. I see no ground for doubting the propriety of the conviction.

"No. 3 of the calendar.—The fourth case, Government *versus* Radha Patur, occurred on the 7th of February 1852. It is proved by the concurrent testimony of five witnesses, that a large body of armed men attacked the *haut* of Sumbhoogunge; that the prisoner was one of the ringleaders, and that he speared the deceased. The medical evidence shows that the deceased received a penetrating wound on the left side of the chest, fracturing one rib, and an incised wound on the left leg, and that he died from the effects of the former wound.

"The deceased stated he could not identify the persons who struck him, but the evidence of the eye-witnesses is most positive and direct as to the identity of the prisoner and to his striking the deceased.

"The prisoner in his petition of appeal pleads, that the witnesses did not name him in their statement to the police, and

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that their evidence is contradictory and interested, and was discredited in regard to two of the prisoners who were acquitted. Interested doubtless it is, but there are no material discrepancies, and the witnesses *did* name the prisoner in their Mofussil depositions. The prisoners Komlakant Sha and Chunder Kishore Roy (see the case of the former disposed of by me on the 27th ultimo) received the benefits of the doubt, which their well-established *alibi* and other probabilities raised, but this fact does not shake the credibility of the evidence regarding the identity of the prisoner. The prisoner's *alibi* is not worth a moment's consideration, and I concur in opinion with the judge and the law officer, that the charge is fully established against the prisoner. I see no ground for modifying the consolidated sentence, and reject the appeal."

PRESENT :

W. B. JACKSON, Esq., Judge.

DIHURISH NUSSO

versus

SOOKER NUSSO PRAMANICK.

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Case of
SOOKER
NUSSO
PRAMANICK.

CRIME CHARGED.—Wilful murder.

Committing Officer, Mr. A. G. Macdonald, magistrate of Rungpore.

Tried before Mr. T. Wyatt, sessions judge of Rungpore, on the 18th August 1852.

A party convicted of murder of his wife; there was no evidence that he was insane at the time, but as he had been insane before, the possibility of his mind having been again affected at the moment, was admitted as a bar to capital punishment; sentence, transportation for life.

Remarks by the sessions judge.—“The prosecutor (brother of the deceased) deposed, that having heard on the road, on a Sunday in Jeyt 1257, from Hawrea, nephew of the prisoner (who lived, though separately, in the same premises with the prisoner) that the prisoner had wounded his wife, the deceased, with an axe, he went to the prisoner's to see the deceased, when he saw her lying down with three wounds of an axe on her head, blood had ceased to flow from the wounds. Prosecutor called to her; she gave no answer, only muttered. Prisoner sat by and observed he had been overtaken by misfortune. Prosecutor then returned home, having heard from Hawrea (a week after) that deceased had died, and that the police, after holding an inquest, had despatched the body to the magistrate. Prosecutor adds that, about five years preceding the event, prisoner had become of unsound mind (*bawoorah*) and left his home for three months—no one knew whither he had gone. He then returned and had since shown no symptom of unsoundness of mind; that he was of sound mind when he asked him, the day after the event, how the deceased had become wounded.

"Deposes that the prisoner is his uncle. Though he eats apart from him, he lives in the same premises with him, and that Jhaupree, deceased, was his (prisoner's) wife. Witness states that he knows not the date, but on a Saturday night, in Jeyt last,

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12, Hawrea, nephew of prisoner, living in the same premises as prisoner.

a great storm arose, he and his wife sleeping in a hut, the door of which faced the south, and the prisoner and his wife, the deceased, sleeping in a room, the door of which faced the west. On going the following morning (Sunday) to the prisoner's room, he found the door of it shut and blood flowing from underneath it, when, seeing this, he called to his uncle, who gave no answer. Afterwards, having opened the door, witness saw deceased lying on her face, blood flowing from the side of her head and the prisoner seated at her side, and an axe on the floor stained with blood lying before him.

"Witness on asking the prisoner what had happened, prisoner made no answer. Subsequently having gone outside the yard and given the alarm, witness called his neighbours, Sooker and Genta (witnesses Nos. 1 and 2). They came and went into the room where the prisoner was, witness having gone to call other neighbours, on which Boncha and Badea, (Nos. 4 and 5) arrived. Sooker asked the prisoner who had wounded deceased? Prisoner said he had. Sooker asked why? Prisoner said that from distress, attending the payment of his rent to the hakim and muhajunee debts, he wished to leave his home, but which Jhaupree (deceased) would not allow him to do, when he had wounded her with an axe. Witness states prisoner said this before all, whence he, witness, had heard it. The neighbours stated, see, if Jhaupree survive, but she could not speak, only mutter and could not take milk or anything else. On the chowkeedar informing the police on the following Saturday, the mohurir came to the spot the following day, (Sunday,) and examined the wounds of deceased, and asked deceased who had wounded her, when she made no answer. A little while after, the mohurir, after assembling the neighbours in the room, asked the deceased the same question, when she pointed with her finger to the prisoner as the person who had wounded her. Beyond this, deceased could not speak. Deceased was sensible and moved her eyes about. At a little before the expiration of the same day, deceased died, and the mohurir in the evening despatched the body to the magistrate. On interrogation, witness states that prisoner was of sound mind on the night before the event and when he saw him afterwards. Witness states he cannot account for the prisoner having wounded his wife, adding that he was in debt to persons, and that about two years before

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he had been once deranged, not eating nor working nor speaking, sometimes sitting with his head down and sometimes lying down, and, without telling any one, went away from his home for fifteen days, when he returned well, and had since continued of sound mind. Witness also states prisoner was not addicted to liquor or intoxicating drugs.

13, Musst. Soorfee.

"This witness, the wife of Hawrea, the preceding witness, confirms in all main particulars the evidence of her husband.

"These two witnesses, immediate neighbours of the prisoner, depose, in confirmation of the evidence of the witness No. 12. The prisoner voluntarily* confessed in the Mofussil, on the day the deceased died, that from distress he had wounded his wife on the head with an axe, from which she died.

"The civil assistant surgeon deposed before me that on examining the body of the deceased, on the 24th May last, he found two compound fractures of the skull, the one on the left side was very extensive, and that on the front part of the head was also of a very serious character, the bone being depressed and lying on the external membrane of the brain. He thinks it very possible the injuries were occasioned by the axe produced at the trial. On my interrogating him as to whether he had discovered any symptom of insanity attending the prisoner when admitted into hospital, he said he had been under his observation for more than a month and had been discharged and had been readmitted for fever. When first admitted, he was rather unruly for two or three days, but afterwards became quiet and rational; that he had seen him on the day of this trial and considered him of sound mind, though there is evidence, on the trial, that the prisoner was once of unsound mind some years previous to the event; he had not been so a second time, and there is no evidence to show that he was of unsound mind, under Act IV. of 1849, at the time he wounded, during the night, the deceased, with an axe, from the effects of which she died eight days afterwards.

"The prisoner, in his defence, states, he does not know what he did, as he was not of sound mind at the time, nor can he say whether he confessed in the Mofussil, or not.

Futwa of the law officer
and opinion of the ses-
sions judge.

"The *futwa* convicts the prisoner of the charge punishable by *deeyut*, in which I concur, and would recommend his being imprisoned for life, in transportation beyond sea."

Remarks by the Nizamut Adawlut.—(Present: Mr. W. B. Jackson.)—"There is no doubt as to the fact that the prisoner killed his wife intentionally by two blows with a sharp instrument (a kind of carpenter's adze). The witnesses say that they saw no symptoms of insanity the day before, and the surgeon reports him sane after the occurrence. The prisoner is a respectable man, with a jote jumma of rupees 30; he was living with his wife, the deceased, on excellent terms; they had four children, the eldest was married; the wife herself was about thirty-five years of age, of good character in the estimation of every one, even of the prisoner himself; they were on good terms the day before the occurrence; and during the night a storm of wind and rain took place; their other relatives, who lived in the same homestead, in the morning observed blood coming from under the door of the prisoner's room, which was shut; they called the neighbours, and on opening the door the wife was found lying down with two severe wounds on her head which penetrated to the brain; she never spoke afterwards, but on being questioned who had done this, pointed to the prisoner. The prisoner when asked how this had happened, said, that he was under some pressure of debts and wanted to run away, but she took him by the hand and feet and persuaded him to stay, so he immediately killed her with the adze. He said he knew he should die too; that her death was on his head, and he never made the least attempt to escape. The witnesses say his face and eyes were very red, but that he did not appear out of his mind. It is however fully established that he had been mad two years before and was of an excitable temperament; there is thus no positive proof of insanity at the time by direct testimony of witnesses, but the act is completely unaccountable on the supposition of sanity; and the particulars are such as make it probable that there may have been some temporary aberration of mind; still there is no sufficient evidence to authorize an acquittal of the murder. I convict the prisoner Sooker Nusso of the murder, and, under the circumstances, sentence him to transportation for life as recommended by the sessions judge."

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Case of
Sooker
Nusso Pra-
manick.

PRESENT :

R. H. MYTTON, Esq., *Officiating Judge.*

RAMCHUNDER DOLOI,

*versus*OKHUR (No. 2), KAMESSUR (No. 3) AND HURREE-
CHURN (No. 4).

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Case of
OKHUR
and others.Prisoners
tried for
arson and
plunder
only cannot
be convicted
of riotous
assault, the
former
being offen-
ces against
property,
the latter
against the
person.**CRIME CHARGED.**—1st count, arson; 2nd count, committing a riotous assault with forcible plundering, not amounting to dacoity.**CRIME ESTABLISHED.**—Riotous assault.

Committing Officer, Captain Rowlatt, magistrate of Kamroop. Tried before Major H. Vetch, deputy commissioner of Assam, on the 28th July 1852.

Remarks by the deputy commissioner.—“Three members of the native jury out of five, acquitted the prisoners of the charges brought against them, while two found them guilty, and with these last the magistrate concurred, and would convict the prisoners of having committed a riotous assault with forcible plundering not amounting to dacoity, and the prisoner No. 2, with setting fire to the prosecutor's house, and Nos. 3 and 4, of having aided and assisted him in so doing, and recommended that the prisoner No. 2 be sentenced to five (5) years' imprisonment; No. 3 to three (3) years', and No. 4 to two (2) years', the whole with labor in irons.

“This court could place no reliance on the evidence of the witnesses, who deposed to having seen the house set on fire by prisoner No. 2, for it is not to be credited that had he really intended to burn down the hut in which complainant had been putting up, that he could have gone away and allowed the fire to be put out by the opposite party before it had extended more than a cubit, or given his enemy such an opportunity of ruining him for so small revenge as the burning of a common hut; besides, it is incredible that of the numerous witnesses looking on at a short distance, none should have seen the smoke if the hut had been set on fire at the time. The same witnesses who deposed to seeing the house set on fire deposed to the plundering. Here again it is most improbable that if the complainant thought it necessary to secure his retreat, he should have left the small box, containing his money, a prey to a riotous assembly; this court, therefore, considered the evidence to the arson and plundering as unworthy of credit, nor did it place more reliance on the numerous witnesses produced in defence to prove an *alibi*.

“This court acquitted the prisoners of arson. It acquits them of so much of the second charge as forcible plundering not

amounting to dacoity. This court convicted the prisoners of riotous assault."

Sentence passed by the lower court, on 28th July 1852.—Imprisonment for six (6) months, without irons, and to pay a fine of rupees fifty (50) on or before the 28th day of August 1852, or, in default of payment, to labor until the fine be paid or the term of sentence expire.

Remarks by the Nizamut Adawlut.—(Present: Mr. R. H. Mytton).—"The prisoners in this case were committed to trial by the magistrate on the 27th April, on charges of arson and plundering. Those charges are entered at the head of the proceedings before the jury and in the Bengalee calendar, and therefore to them, and them only, can the prisoners be supposed to have pleaded.

"In the *roobukaree* of 27th June, ordering submission of the case to the deputy commissioner, these offences and no other are stated.

"The deputy commissioner acquits the prisoners of both these charges, but finds them guilty of a riotous assault, which is quite a different offence, the crimes charged being offences against property, and the crime found established being one against the person. It is true that riotous assault is entered in the English calendar as part of the second count, but the calendar bears a date subsequent to the trial. Under these circumstances it is clear that the prisoners have been convicted of an offence for which they were not tried. Such a conviction cannot stand. The prisoners will be released."

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Case of
ОКНУР and
others.

PRESENT :

R. H. MYTTON, Esq., *Officiating Judge.*

PHOOL MAHOMED

versus

SONAH TELEE.

1852.

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Case of
SONAH TELEE.Assault with
severe wound-
ing causing
loss of sight.
Sentence
fourteen
years' impris-
onment with
labor and
irons.

CRIME CHARGED.—1st count, assault with severe wounding, on the 10th November 1851, corresponding with 26th Kartick 1258 B. S.; 2nd count, being present, aiding and abetting in the same.

Committing Officer, Mr. A. G. Macdonald, magistrate of Rungpore.

Tried before Mr. T. Wyatt, sessions judge of Rungpore, on the 20th August 1852.

Remarks by the sessions judge.—“The prisoner, Sonah Telee, was one of those implicated in the case of assault with severe wounding, which occurred on the 10th November 1851, referred for the orders of the Court of Nizamut Adawlut, under date the 6th March 1852, but who (prisoner) had absconded at that time, and was only apprehended on the 5th April last. Reference is solicited to my report of the 6th March above cited, on which the court's orders were passed on the 3rd April 1852.

“In this case, on the evidence of witnesses Nos. 1 to 4 of the calendar, the prisoner, Sonah Telee (who was a *ryot* of Shuffee Mahomed Dalal, the principal in the assault, for which reason prisoner joined him,) is fully criminated of having joined the rest of the assailants in beating with a stick and dragging the prosecutor to the side of the road, where the witnesses, as passing by, bore testimony to what occurred.

“The *futwa* finds the prisoner guilty of the second count, punishable by *tazeer*. I concur in the conviction, and as the court in the former case subjected the rest of the prisoners (save Shuffee Mahomed Dalal, who was sentenced to imprisonment for life in transportation,) to fourteen (14) years' imprisonment, with labor and irons, in banishment, and as this prisoner seems to have been equally guilty with them, the trial is referred for the court's sentence in respect to him.”

Remarks by the Nizamut Adawlut.—(Present: Mr. R. H. Mytton.)—“This case was fully reviewed on the 3rd April, *vide* page 496 of Nizamut Adawlut Reports for that month. The prisoner, respecting whom reference is now made, was named in the previous statements.

“In accordance with the suggestion of the sessions judge, and the sentences on the other prisoners, Sonah Telee is sentenced to fourteen (14) years' imprisonment, with labor and irons, in banishment.”

PRESENT :

W. B. JACKSON, Esq., Judge.

GOVERNMENT

versus

RAJOO MUNDUL (No. 8), PURAN CHYN (No. 9),
JUFFER CHYN (No. 10) AND DAHOO CHYN (No. 11).

CRIME CHARGED.—Prisoner No. 8, perjury, in having, on the 7th June 1852, corresponding with 26th Jeyt 1259, deposed, under a solemn declaration taken instead of an oath, before the law officer of Moorshedabad, Abdool Jubbar, exercising powers of magistrate, that ‘I did not complain against Sreeram Roy, ‘defendant,’ such deposition being false, and having been intentionally and deliberately made on a point material to the issue of the case. Prisoners Nos. 9 and 10, perjury, in having, on the 7th June 1852 corresponding with 26th Jeyt 1259, deposed, under a solemn declaration taken instead of an oath, before the law officer of Moorshedabad, Abdool Jubbar, exercising powers of magistrate, that ‘they are not related to the prosecutor Dahoo,’ such deposition being false, and having been intentionally and deliberately made on a point material to the issue of the case; and prisoner No. 11, subornation of perjury, in having, on the 7th June 1852, corresponding with 26th Jeyt 1259, caused the above false depositions to be given by Rajoo Mundul, Puran Chyn and Juffer Chyn before the said law officer, on a point material to the issue of the case.

Committing Officer, Moulvee Abdool Jubbar, law officer, exercising powers of magistrate of Moorshedabad.

Tried before Mr. D. I. Money, sessions judge of Moorshedabad, on the 5th August 1852.

Remarks by the sessions judge.—“The prisoners pleaded ‘not guilty.’

“The particulars of the case are as follows :—

“The prisoner Dahoo brought an action in the foudaree court against one Sreeram Roy for the payment of salary due to him, and named the other three prisoners as witnesses. The case was referred to the moulvee for trial, before whom they were brought and examined on the 7th June 1851.

“Rajoo Mundul deposed, on a solemn declaration, that he had not prosecuted Sreeram Roy on the charge of stealing a melon.

“Dahoo stated, on a solemn declaration, that Puran was his father-in-law, but that he was not related to Juffer.

“Juffer swore that he was not related to Dahoo, the plaintiff.

“Puran swore also that he had no connexion with Dahoo; again, on being asked whether he was related to Dahoo, who had stated that he was his son-in-law, he answered in the negative.

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Held that it does not necessarily follow, that the party in whose favor the witnesses may have deposed falsely, suborned them to commit perjury.

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"From the darogah's report produced by Srēeram Roy, it appeared that the prisoner Rajoo had lodged a complaint against him and others, and on the 30th June, on being interrogated, the prisoner admitted that on the 7th June he was drunk when he denied the fact.

"On the 30th June 1852, all the prisoners' answers were taken down before the moulvee, when Dahoo denied having caused false depositions to be given by the above-named witnesses, but admitted that, being intoxicated, he had stated one thing for another; that Juffer was his brother-in-law, having married his sister.

"Juffer stated that on the 7th June, when he was examined, he was drunk and had denied the relationship between himself and Dahoo; that Dahoo was his brother-in-law, he, Juffer, having married Dahoo's sister.

"Puran admitted that on the day his deposition was taken down he was insensible from drinking, and therefore he did not acknowledge the relationship between himself and Dahoo; that Dahoo was his son-in-law, having married his daughter.

"The confessions of the prisoners taken before the law officer, in which they admitted the false statements they had made, were proved by the attesting witnesses to have been voluntary. From them, as well as from the evidence of the witnesses for the prosecution, it was established that the prisoner Puran was the father-in-law of Dahoo, and that Juffer was Dahoo's brother-in-law, having married his sister. Rajoo had no connexion with any of the other prisoners.

"A jury sat on the trial, consisting of Pundit Mudun Mohun Turkolunkar, Baboo Doorgapershad Bose and Moulvee Gholam Ghous. The former two convicted the prisoners Puran and Juffer of giving false evidence in denying their relationship with Dahoo, but not on a point material to the issue of the case, and that consequently they are not guilty of a criminal offence. They acquitted the prisoner Dahoo, upon the ground that he in his first statement admitted his connexion with Puran, but convicted the prisoner Rajoo of perjury. Moulvee Gholam Ghous convicted Juffer, Puran and Rajoo of perjury and Dahoo of subornation of perjury.

"Considering the prisoners Puran Chyn, Rajoo Chyn and Juffer Chyn guilty of perjury in giving a false deposition under a solemn declaration instead of an oath on a point material to the issue, and the prisoner Dahoo Chyn of subornation of perjury, I would, with reference to the age of the prisoner Dahoo Chyn, who is only seventeen years old, and to the ignorance of this peculiar class and caste of people regarding the responsibilities of an oath, recommend them each to be sentenced to six (6) months' imprisonment, with labor, such sentence being less

than the punishment, I have the power to inflict for perjury under the provisions of Regulation XVII. of 1817." 1852.

Remarks by the Nizamut Adawlut.—(Present: Mr. W. B. Jackson.)—"I convict the prisoners Rajoo, Puran and Juffer of perjury, and sentence them, as suggested by the sessions judge, to six (6) months' imprisonment with hard labor. I find no proof that Dahoo was guilty of subornation of perjury; it is true that these men were giving evidence in his case, but that he caused them to give *false* evidence there is no proof whatever; it cannot be assumed that every one who calls a witness who is guilty of perjury, is necessarily guilty of having suborned that witness to commit perjury. I acquit Dahoo and direct his release." September 17.
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PRESENT:

SIR R. BARLOW, BART., *Judge.*

GOVERNMENT

versus

MUSST. NUGO.

CRIME CHARGED.—1st count, wilful murder of her new-born infant; 2nd count, exposing and abandoning her child in order to destroy it. 1852.

Committing Officer, Mr. W. T. Tucker, officiating magistrate of Patna. September 18.

Tried before Mr. G. Gough, commissioner with powers of a sessions judge, on the 8th September 1852.

Remarks by the sessions judge.—"The following are the particulars of this case:—It appears that the prisoner is a widow, and has been so for many years. She was known to be pregnant shortly before the occurrence which has led to this trial, and when a new-born child was found exposed, under a *pakur* tree in some jungle, not very remote from her house, suspicion was instantly excited that the child had been exposed by her. Case of
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The prisoner was convicted of exposing her new-born infant with intent to destroy it.

"The infant was therefore immediately taken by those who found it to the prisoner, when she acknowledged it to be hers, and confessed that she had placed it in the jungle from fear of shame. The child died, however, within two days.

"The above is clearly proved. The prisoner stated before me, that she gave birth to the child under the *pakur* tree, and not being in her proper senses left it there. There cannot be a doubt, however, but that she exposed the infant for the purpose of destroying it.

"The law officer convicts the prisoner on the second charge, which is to the above effect, and I entirely concur with him, and

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would recommend that Musst. Nugo be imprisoned for seven (7) years, with labor befitting her sex."

Remarks by the Nizamut Adawlut.—(Present : Sir R. Barlow, Bart.)—"I convict the prisoner of exposing her new-born infant with intent to destroy it. The infant was thrown into a field at some distance from the road, and had not the witnesses Boodhun and Musst. Aklee passed the spot, in all probability, it would have met its death there. It was, however, taken up and carried to the prisoner's house and died after two days.

"The commissioner's sentence is confirmed."

PRESENT :

W. B. JACKSON, Esq., Judge.

COLLECTOR OF DINAGEPORE ON THE PART OF THE
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TRIAL No. 1.—SANTONATH BHUTTACHARJE (No. 3), CHYTUN CHURN DASS (No. 4) AND RAJNARAIN BAGCHY (No. 5).

TRIAL No. 2.—SANTONATH BHUTTACHARJE (No. 6), CHYTUN CHURN DASS (No. 7), RAJNARAIN BAGCHY (No. 8).

Held that a party may be charged with issuing a forged document by a private person under the provisions of Regulation XVII. of 1817, and that the collector may prosecute, on the part of the Court of Wards, the party interested being a ward of that Court.

The judgment of the sessions judge upheld on the evidence in the case.

CRIME CHARGED.—TRIAL No. 1.—1st count, forging an *ijara pottah* for lot Parbuttypore, &c., property of Sarely Mohun Ghose, &c., minor zemindars; 2nd count, issuing a forged *pottah*, knowing it to be such; 3rd count, accomplices in the above crimes; 4th count, accessory before and after the facts.

TRIAL No. 2.—Conspiracy, fraudulently to obtain possession of the farm, lot Parbuttypore, to the detriment of Sarely Mohun Ghose, &c., minor zemindars, No. 8, also of aiding and abetting in the conspiracy of Chytun Churn and Santonath, fraudulently to obtain possession of the farm, lot Parbuttypore.

CRIME ESTABLISHED.—TRIAL No. 1.—Nos. 3 and 4, issuing a forged *pottah*, knowing it to be such, and No. 5, accessory to the above crime before and after the fact.

TRIAL No. 2.—Conspiracy, fraudulently to obtain possession of the farm, lot Parbuttypore, to the detriment of Sarely Mohun Ghose, &c., minor zemindars.

Committing Officer, Mr. E. S. Pearson, magistrate of Dinagepore.

Tried before Mr. J. Grant, sessions judge of Dinagepore, on the 1st July 1852.

Remarks by the sessions judge.—TRIAL No. 1.—“ The prisoners are charged in a separate calendar with conspiracy, it having been pointed out by the Court of Nizamut in the former trial, which was declared invalid, as no charge had been preferred on oath to the magistrate, that uttering forged documents and conspiracy were not cognate crimes,” Nizamut Reports, December 1851, volume I., No. 12, page 1666. It will, however, be convenient to consider the cases together, as in both the object was fraudulently to obtain the farm of an estate, to the detriment of two minors. The prisoner Santonath (No. 3) is a sort of brother-in-law of the prisoner No. 5, Rajnarain Bagchy, sudder *mookhtar* of the minors, and Chytun Churn (No. 4), their *jumma navees*, was subsequently appointed protector by the judge of Purneah. The father of the minors in his will named their mothers as guardians, recommending them to employ as managers Benodelal and Rughobur Ghose (the father of one, and uncle of the other,) who accordingly managed the estates for several years. In 1256, the estates were, at the request of the guardians, brought under the Court of Wards, when the collector of Dinagepore, Mr. C. Steer, called for three years’ collection papers of lot Parbuttypore, &c. (1253 to 1255), with the view to ascertaining the *jumma* and letting it out in farm to the highest bidder. The sudder *mookhtar*, Rajnarain Bagchy (No. 5) filed a *jumma-wasil-bakee* for 1253, attested by the Mofussil *jumma navees*, with an *ijara dowl* for 1254, not so attested, but included in the list of papers signed by him as *mookhtar*. On the 9th Bhadoon 1256 (24th April 1849), the farm of Parbuttypore was put up to auction by the officiating collector (Mr. R. J. Scott), and knocked down at a *jumma* of rupees 20,551 to Santonath (No. 3), who failed to give security, when it was given to Mr. H. Holm, who had bid rupees 20,501. Santonath (No. 3) appealed to the commissioner of revenue in a petition, dated the 17th Bhadoon (1st September), forwarded by dak, which was disallowed on the 28th Bhadoon, (12th September). Another petition, stating that the said Santonath (No. 3), and Chytun Churn, (No. 4), had taken Parbuttypore in farm from the guardians for nine years, namely, 1254 to 1262, and supported by a *pottah*, was filed a few days after this (2nd Assin, 17th September,) and disallowed on the 10th Magh 1256, or 22nd January 1850. This *pottah* purports to be for the lease of lot Parbuttypore, &c., at a *jumma* of rupees 20,011-4-11 to Chytun Churn Dass (No. 4) and Santonath Bhuttacharje (No. 3), for nine years, 1254 to 1262, and is dated the 12th Jeyt 1254. It is written on a stamp purchased on the 1st Sawun 1248 (15th July 1841), by Jan Mahomed, for the use of his master Indro Chunder, a Dinagepore banker, and it is clear, from the bank books and the

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evidence of two gomashas and a mohurir, that the stamp was sold to Rajnarain Bagchy, (No. 5), on the 3rd Sawun 1256, 17th July 1849, little more than a month before the farm was put up to auction by the officiating collector. The prisoners in their defence having alluded to the former trial, I give my remarks on it, which are equally applicable to this one, with some slight exceptions, and will add what appears necessary with reference to the defence and the recent evidence.

"The forged document purports to be a *pottah* in the name of the prisoners Chytun Churn Dass and Santonath Bhuttacharje, for the lease of lots Parbuttypore, &c., at a *jumma* of rupees 20,011-4-11, from 1254 to 1262. Lot Parbuttypore and other estates in Dinagepore and Purneah belonged to Kishen Chunder Ghose, who died in 1251, having by his will appointed Chumpacklatta and Mun Mohunee, his widows, guardians to his minor sons, and recommended the employment of Benodelal and Ruggghobur Ghose (since deceased,) as managers (*karpurdazan*.) In 1256 the estates were, at the request of the guardians, brought under the Court of Wards, and on the 9th Bhadoon 1256, the officiating collector of Dinagepore put the farm of lot Parbuttypore up to auction, when it was knocked down to the prisoner No. 3, Santonath, at a *jumma* of rupees 20,551. The nearest bid to that was Mr. Holm's, rupees 20,501, and the highest bidder having failed to give good security, the farm was given to him at the *jumma* he had offered. The prisoner Santonath appealed to the commissioner of revenue, urging that the estate had previously been given in farm to himself and Chytun Churn (No. 4) at a *jumma* of rupees 20,011, by the guardians, and in support of the claim the *pottah* was filed. The claim was disallowed by the commissioner and the case, while in appeal to the Board of Revenue, was remanded for investigation to the collector of Dinagepore, who considered the *pottah* a forgery, and accordingly made over Rajnarain Bagchy (No. 5), by whom the stamp was said to have been purchased, to the magistrate. That appeal to the Board of Revenue, against the farm of the estate to Mr. Holm, was subsequently dismissed, and the collector's proceedings in respect to the *pottah* approved of. There is abundance of evidence, oral and documentary, to show that the estate had not been in farm until it was put up to auction by the officiating collector, and the prisoners Santonath (No. 3) and Chytun Churn (No. 4) have failed, or rather not attempted, to produce cash collection or measurement accounts connected with their asserted farm, having the slightest pretensions to genuineness. A document, purporting to be a *dakhila* for the farm rent of 1254, with the signatures of the managers, on the part of the widows, is evidently fictitious. One of the managers is dead, but the survivor (father of one of the widows)

declares, in his evidence, that the estate never was farmed to the prisoners, and the general evidence and documents in the record show that the private seals of the widows were never used for zemindaree papers, and that the signatures of the managers were only attached to documents with the zemindaree seal. The document is also negatived by the books of a Dinagapore bank supported by *chelans*, and the evidence of the book-keepers, showing that the lot Parbuttypore collections were remitted on the zemindar's account, through the bank, to the collectorate. The other documents, filed by the prisoners, are some *ryots' kubooleuts*, things very easily manufactured, and copies of evidence and a *mookhtarnama* which had been produced in the collectorate by Rajnarain Bagchy (prisoner No. 5), in pursuance of his plan for securing the farm, as will be subsequently explained. The stamp on which the *pottah* is written appears to have been purchased in 1248, by Jan Mahomed, a servant of Indro Chunder, a banker at Dinagapore, and the prisoners Nos. 3 and 4 have not accounted for its having come into their hands, or rather into the hands of the widows, from whom they say they received it. Neither have they made any attempt to show that the stamps (rupees 64 each) for the corresponding *kubooleut*, and security bond were furnished by them. The documents filed in the name or on the part of the widows I shall allude to, with reference to the charge of conspiracy, and Rajnarain Bagchy (prisoner No. 5) who, though he could only be convicted as an accessory in respect to the issuing of the forged documents, was evidently the prime mover in the matter. I do not think it necessary to allude to all the documents and circumstances, which prove that the prisoners Nos. 3 and 4 never held the farm, as they are so very numerous, and most of them are given in detail in the copy of the collector's report to the Board of Revenue, filed in his record accompanying. It, however, may be as well to point out the great improbability of the widows concealing, or being allowed to conceal, that they had granted a valuable farm to their old and confidential servant Chlytun Churn (prisoner No. 4), then their sudder *jumma navees*, and subsequently recommended by them to the judge of Purneah for nomination as *tehseldar* of an estate in which they had a share, and protector of their household, and the still greater improbability of Santanath (prisoner No. 3), his partner, bidding at the collector's auction for the said farm without a word of remonstrance then, or subsequently, when security tendered by him was disallowed. The evidence against Rajnarain Bagchy (prisoner No. 5) as an accessory in the fourth count, that against him and the other prisoners in respect to the fifth and sixth counts, is of course the same. It has been shown that the *pottah* is a forged document, and that the prisoners Nos. 3 and

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4 issued it. That Rajnarain Bagchy (prisoner No. 5) conspired with the other persons to obtain the farm by means of the said forged *pottah* and other documents is, in my opinion, apparent from the following. The stamp on which the *pottah* is written was in Indro Chunder's bank from 1248 to Sawun 1256, when it was purchased by Rajnarain Bagchy (No. 5), as shown by the books and the evidence of Teekum Chand Baboo, (No. 2), Parum Sookh, mohurir (No. 15), and that of Radhanath Sircar (No. 1), deceased, given in the *foujdaree*, and established by evidence before me. I can see no ground for suspicion as to the books or the evidence of the book-keepers. The *mookhtarnama* in the name of Jug Mohun Sein (No. 20), on the part of Santonath* (No. 3) and Chytun Churn, (No. 4), relating to the farm claimed and the said *pottah*, was prepared and smuggled into the collectorate in Bhadoon 1256, by Rajnarain, (No. 5), as shown by the *mookhtarnama*, and the evidence of the said *mookhtar* and Prem (No. 21), and Purmanund (No. 22) witnesses. It is clear that these men are still friendly towards the prisoner, and I see no ground for doubting their evidence so far as it tells against him. Instead of the collection papers of 1253, 1254 and 1255, called for from the zemindars as a guide in respect to the proposed farming of the estate in 1256, collection papers of 1253 only were filed, and attested by the *jumma navees*, while an *ijara-dowl* for 1254, not so attested, was at the same time filed and included in the list signed as *mookhtar* by Rajnarain, (No. 5): see evidence of Parusnath Gopt (No. 7), Ramchunder Moiter, (No. 25), Doorga Kanth Mujoomdar (No. 29) and others. The object here first was, if possible, to obtain the farm at a low rate, by making the 1253 collections the foundation of the bidding; and secondly, to have the *ijara-dowl* to fall back on, in case of being out-bid to aid in the claim to the alleged farm alluded to in the *mookhtarnama* above-mentioned. The several documents filed by Rajnarain (No. 5), on the part of the widows, in which the existence of the alleged farm is asserted or objections made to the farmer (Mr. Holm) occupying the zemindar's catcherry, could no doubt have been easily obtained through his accomplice Chytun Churn (No. 4), and are evidently not genuine, being directly opposed to the application to have the estate brought under the Court of Wards, and to a subsequent request that if lot Parbuttypore could not readily be let out in farm, it was their wish that the collections should be made through the *jumma navees*, Chytun Churn (No. 4), and Bhirub Bose as their *tehseeldar*. Under such circumstances they clearly prove his share in the conspiracy. There are sundry other circumstances in the case, which I do not consider it necessary to detail, as I think the proof of guilt clear and abundant. It was evidently the intention of Rajnarain Bagchy (No. 5), to obtain the farm of

the estate on advantageous terms, by concealing the actual collections; in order to get rid of competitors at the auction, and failing in that to obtain it by fraud and forgery. No petition was given before the auction with the *mookhtarnama*, alluding to the alleged farm, as a petition could not remain without notice in the collectorate for days or months as a *mookhtarnama* might, and the *dowl* for 1254 was not attested with the 1253 collection papers, as the necessary questions might have produced awkward answers from the *jumma navees*. He, no doubt, intended to keep the farm to himself, if successful in bidding through his brother-in-law Santonath (No. 3), though Chytun Churn's name was entered in the *mookhtarnama* and *dowl* in case of failure, as his assistance would then be necessary. The assumption and assertions of the prisoners in their defence are in several instances altogether unsupported by proof, or directly opposed to fact, particularly as to the evidence of Benodelal, who formerly merely stated that no *dakhila* for the rent of 1254 could have been given by him to the prisoners, as the estate never was in farm, and now asserts that the signature entered on the *dakhila* as his is a forgery; that the paper was given with several other unstamped blank papers having the seal of the guardians to Rajnarain Bagchy (No. 5), at his own request, notwithstanding the remonstrances of the witnesses, to enable him to present whatever *urzees* he might consider necessary, and that he, the witness, drew the *urzee mudd* in Persian on the paper to prevent its being misapplied. The apparent discrepancy is cleared up by the fact that on the former occasion the *dakhila* was not forthcoming, being then with the Sudder Board of Revenue. It was subsequently sent for, the prisoners having in their defence pleaded it and another, which appears to have been altogether imaginary, though probably named with reference to their asserted possession of the farm during both years and without reckoning on their being sent for. Allusion is also made to the said witness as allowing that money was borrowed on a document bearing only the private seals of the minors' mothers, whereas he merely states that he was absent at the time of the loan, and therefore cannot speak as to particulars. They also plead with reference to the said *dakhila* being written on an *urzee* paper reversed, that the circumstance was not noticed by any person during the former trial, though the seals were then minutely examined by the law officer. So far as I recollect this is perfectly true, but I cannot see that it is in any way favorable to the prisoners, who apparently trust to pointing out omissions and irregularities, without attempting to establish their innocence by proof or explanations as to the want of it, when it ought to be forthcoming if they are not guilty, such as collection papers and accounts, the manner in which the *pottah* stamp was obtained

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from the banker and the stamps for the corresponding *kuboolent* and security bond, the security said to have been furnished, the asserted agreement to give rupees 500 *peahgee*, the payment of a part of it, and their having been kept out of possession of certain villages on account of the balance. The *futwa* of the law officer convicted the prisoners Santonath Bhuttacharje (No. 3) and Chytun Churn Dass (No. 4), on the second count, issuing a forged *pottah* knowing it to be such, and Rajnarain Bagchy (No. 5), on the fourth count, accessory before and after the facts, in which I concurred."

TRIAL No. 2.—"In this case the *futwa* of the law officer convicted the prisoners, in which I concurred, and passed a consolidated sentence, with reference to it and case No. 1 for July sessions of 1852, in which the circumstances of both are given in detail."

Sentence passed by the lower court.—No. 3 to be imprisoned, without irons, for three (3) years, and a fine of rupees two hundred (200), or, in default, to labor until the fine be paid or the sentence expire, and Nos. 4 and 5, each to be imprisoned, with labor, for five (5) years.

Remarks by the Nizamut Adawlut.—(Present: Mr. W. B. Jackson.)—"On the case coming on, Mr. Norris, on the part of the prisoners, objected to the collector being allowed to sue; he urged that the collector made his charge on oath, appearing on the part of the Court of Wards, under whose management the estates Parbuttypore, &c., are held at present; but there is no written authority on the part of the Court of Wards to the collector; believes the commissioner was opposed to the prosecution and gave no permission; Regulation X. of 1793 gives no such power to prosecute to collectors; a general agent cannot prosecute for forgery; Section IV., Regulation IX. of 1807 requires that agents shall have specific authority to prosecute; further after that the Court of Wards has no power to prosecute criminally; denies that giving in a forged document to the commissioner as Court of Wards is a criminal act; to make it criminal it must be filed before a civil or criminal court; refers to Section V., Regulation II. of 1807, and Section X., Regulation XVII. of 1817; denies that uttering or forging a document is a criminal act; Act I. of 1848, rescinds the Circular Order, 13th March 1846.

"Mr. Waller, for the prosecution, contends—That the collector is the agent of the Court of Wards; that there is nothing to limit this agency, which is not even denied; that the Court of Wards, so far from disclaiming the prosecution, supports it. Baboo Ramapersaud appears in support of it on the part of the Government and the Board of Revenue, who have full power over the proceedings of the Court of Wards. No formal written authority is necessary.

"I consider that the Court of Wards, as representing the interests of the minor zemindars, has authority to prosecute for forgery, and the like, committed to the prejudice of the minors' interests, and that the collector, as the legally-constituted agent of the Court of Wards, is competent to prosecute on the part of that court; the Board of Revenue, which has full power over the Court of Wards, supports this prosecution, and nothing is shown to oppose to this fact; the inference is that the prosecution has the authority of the Court of Wards. As regards the criminality of the act as laid in the indictment, it is plain that Section II., Regulation II. of 1807 declares the crime of forgery criminal and punishable. Regulation XVII. of 1817 declares the utterance of forged documents criminal and punishable; these are general provisions of the law. Act I. of 1848 refers to a specific kind of forgery; the general rule is not affected by it; the Court of Wards is not a civil or criminal court, such as to subject parties filing a forged document before it, to the penalties and liabilities imposed by the law on persons who file a forged document before a civil or criminal court; but it is clearly a criminal offence under the general law knowingly to file a forged document before the Court of Wards in support of a claim; this is an utterance of the forged document under Regulation XVII. of 1817.

"*Baboo Kishen Kishore* then was heard of the merits of the case; states that the charge is for forgery of a *pottah*, dated 12th Jeyt 1254, or 24th May 1847, the date of sale of the stamp paper on which it is written is 1st Sawun 1248, or 15th July 1841, the purchaser's name is Jan Mahomed Nesho, on the part of Indro Chunder Baboo, at Rajgunge in Dinagepore; price of stamp rupees 64; it bears the seals of Musst. Mun Mohunee and Chunpaklatta; the prosecutor and his witness say this stamp was purchased by Indro Chunder's Kotee on the 3rd Sawun 1256, or 17th July 1849; to prove this several witnesses are brought; the gomashtha Tekumchund says, he does not know who bought it; but on reference to the books of the *kotee*, finds it was bought by the prisoner Rajnarain Bagchy, and the price paid on the 30th Sawun; Radhanath says, he forgets whether he or Tekumchund gave the document to Rajnarain, but knows that Rajnarain took it; and the money was paid 30th Sawun. Prem Sookh says Rajnarain took the paper on the 3rd Sawun, and paid for it on the same day; did not know him before; the money was to remain in account, and afterwards to be credited. Jan Mahomed knows nothing about it, though he was the actual purchaser; there is some suspicion regarding the entry in the (*khata*) books of the house; it is not in the line with other entries. The prosecutor alleges that the stamp was bought from the

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original purchaser on 3rd Sawun 1256 ; contends that there is no proof that Rajnarain purchased at all. The seals are those of the guardians of the minor zemindar. No one denies that they are genuine ; the two guardians say that they did give this *pottah* ; in proof of this, refers to a petition filed on the part of the guardians through the prisoner Rajnarain Bagchy, their *mookhtar*, before collector, 20th Bhadoon 1257, or 13th September 1850. A similar petition was given in before the Board of Revenue to the same effect through another *mookhtar*, 20th July 1850. The *mookhtarnama* was carefully tested by the moonsiff's inquiry through his *peshkar*, and the women admitted the *mookhtarnama* ; observes that the petition on part of prisoners to collector was filed before the settlement had been effected with the planter, Mr. Holm ; the petitioner is referred to in the collector's proceeding making that settlement. A *dowl* or rent-roll of the farm is mentioned, dated 1254 ; points out that the entry in the (*khata*) books of the house is simply Rajnarain Bagchy, rupees 64 ; that the name of Rajnarain is not in the *pottah* ; urges that the prisoner Chytun Churn is not concerned in the utterance of the document which was filed before the commissioner by Santonath only.

“ Mr. Waller, for the prosecution—The whole bearings of the case must be taken into consideration ; a zemindar died leaving two widows and three children ; he left a will, appointing the two widows guardians, and Benodelal and Rughubur Ghose managers of the property ; the will took effect accordingly, and the guardians and managers assumed their respective functions. The three prisoners now before the court are Rajnarain, the sudder *mookhtar* of the two widows, Santonath, his brother-in-law, and Chytun Churn the *jumma navees* of the estate. In 1256, the estates were brought under the Court of Wards ; the collector called for three years' village accounts with a view to making a settlement of the estate, Rajnarain then filed a *jumma-wasil-bakee* for 1253 with a *dowl* for 1254. The *jumma-wasil-bakee* was attested by the *jumma navees* Parusnath ; the *dowl* though was not included in the list of papers filed by Rajnarain. On 9th Bhadoon 1256 the estate was put up to auction for farming tenders by the collector. Santonath bid the highest, rupees 20,551, and the farm was to be given to him ; Santonath had before applied for the farm, and up to this time there was no mention of his holding a previous farm ; but now he alleged such a farm. His bid for the farm was refused for defect of security, and the farm given to the next bidder, Mr. Holm ; Santonath appealed to the commissioner against the collector's rejection of his offer ; this appeal was rejected on 28th Bhadoon 1256 ; Santonath then again applied to the commissioner, on 3rd Assin 1256, and urged that he and Chytun Churn held a farm of the estate for nine years from 1254,

and in support of that claim filed the *pottah* to that effect now alleged to be forged; this lease was to Santonath and Chytun Churn, for nine years at a *jumma* of rupees 20,011-4-11, that is, below the rent offered on the 9th Bhadoon by Santonath; the stamp paper bore a registry to the effect that it was bought 1st Sawun 1248, or 15th July 1851, by Jan Mahomed for Indro Chunder, koteewala of Dinagepore; from the books of the house, attested by the gomashas Premsookh and others, it appears that Rajnarain bought it from the *kotee* in a blank state on 30th Sawun 1256; this purchase of the stamp paper by Rajnarain, therefore, took place two years after date of the farming lease which it bears; Jan Mahomed admits that he bought it for the *kotee*, and this is entered on the back of the document; this lease is therefore forged. Santonath filed it before the commissioner with a view to giving effect to the lease in favor of himself and Chytun Churn; Chytun Churn admits that he was a joint claimant of the farm under this lease and authorized Santonath to file it on his part; observes that there is no evidence to prove that the seals are genuine, or that the women did affix these seals, and there are no witnesses' names to the document.

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"*Sumbhoonath Pundit*, on the same side, observes—That this stamp paper appears in the books of the house throughout the years from 1248 to 1256 as part of the assets of the house, and that there can be no suspicion against the books of the house, as they were seized by the magistrate without notice; there was no opportunity of interpolation.

JUDGMENT.—"It is beyond a doubt that the *lease* is a forgery; the stamp, on which it is written, was bought by Rajnarain from the house in 1256, and the date of the lease is 1254, and the purport of it is to lease the property from the beginning of 1254; now it is proved by evidence that the estate was held *khas* during 1254 and 1255, and was farmed in 1256 to Mr. Holm by the collector; it does not signify whether the seals of the widows are or are not genuine; if they affixed the seals to the lease they might be tried for forgery, inasmuch as the date entered is a false date, and a false entry of date is as much a forgery as a false entry of name; the guardians do not admit the seals to have been affixed by them or by their order; no one has called them as witnesses, and as they could not be called on to criminate themselves, it is doubtful whether their evidence would be admissible; the objections raised to the evidence of the purchase of the stamp by Rajnarain from the house appear to me of no force; the evidence is good and conclusive, and there is no discrepancy of importance in it.

"It is established, that Santonath filed this forged lease on the part of himself and of Chytun Churn to enforce their joint

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claim to the farm under this forged lease ; as their names appear in the lease and the writing as well as the filing was for their benefit, and they have both attempted to benefit by it, they are both responsible for uttering it.

" As regards the other prisoner, Rajnarain, it is proved that he bought the stamp on which it is written in 1256 ; it was then blank ; some few days after his purchase it is produced, bearing a forged lease, by his brother-in-law, Santonath, who is also connected with Rajnarain in other transactions, and there is evidence which makes it probable that the lease, though drawn in the name of Santonath and Chytun Churn, was for the use of Rajnarain himself ; no explanation is attempted of the transfer of the paper from Rajnarain to Santonath ; it is not even asserted that it was sold ; the inference is that Rajnarain bought it for the purpose of writing or having written the forged lease on it ; it is further proved that Rajnarain was the *sudder mookhtar* of the two guardians, the widows, whose seals appear on the lease ; there is reason to believe that if these are their genuine seals, they were affixed without their order. Rajnarain, as *sudder mookhtar*, would of course have the means of effecting this without difficulty. It is shown that the ranees had given in a notice to the court and to the revenue authorities, begging that no seals of theirs might be considered genuine, unless countersigned by the managers, *viz.*, Benodelal and Rughubur ; the latter is dead, but Benodelal in his evidence denies all knowledge of the lease in question ; the result of this is that Rajnarain was an accessory before the fact to the forgery of the lease, by supplying the paper on which it was written, and for the purpose of having it written.

" On the above grounds I consider the conviction of the prisoners Santonath and Chytun Churn, of knowingly filing a forged lease, and of Rajnarain as an accessory before the fact to the forgery, to be just and proper, and I see no reason to interfere with the sentence.

" I do not think it necessary to say anything further regarding the second case of conspiracy ; except that the facts above-mentioned, prove a conspiracy as well as the charge ; I have therefore confirmed the consolidated sentence."

PRESENT:

W. B. JACKSON, Esq., Judge.

DHIRJALL SINGH.

BIKHAREE RUJWAR (No. 3), KANOO RUJWAR (No. 4), CHITAWA RUJWAR (No. 5), GEYAN RUJWAR (No. 6), ASSA SONAR (No. 7), GHOOJEE SONAR (No. 8), BUNDHOO SONAR (No. 9) AND BUNDHOO RUJWAR (No. 10).

CRIME CHARGED.—No. 3; 1st, highway-robbery and plunder of property valued at rupees 24-11-0; 2nd, having had in his possession and exchanged a portion of the said plundered property valued at rupees 5-4-0, well knowing it to be such at the time. Nos. 4, 5 and 6; 1st, being accomplices in the crime with prisoner No. 3, in the 1st count; 2nd, being in possession of and concealing a portion of the said plundered property valued at rupees 4-13-0, well knowing it to be such at the time. Nos. 7, 8 and 9, receiving from prisoner No. 3, and being in possession of some plundered property valued at rupees 5-4-0, well knowing it to be such at the time, the same being a portion of the aforesaid plundered property valued at rupees 24-11-0. No. 10, being accessary after the fact in the crime with prisoner No. 3.

Committing Officer, Mr. A. G. Wilson, deputy magistrate of Nowada, zillah Behar.

Tried before Mr. T. Sandys, sessions judge of Behar, on the 21st July 1852.

Remarks by the sessions judge.—“The prosecutor is a police burkundauz and was returning home on leave of absence, accompanied by his family, in a conveyance borne by bearers, and two porters, witnesses Nos. 15 and 16, carrying his baggage. On 11th May last, they started from Akbulpore before day-break, and had reached a short distance off from Paharpore, where the chief prisoners, and witnesses Nos. 18 and 19 reside, and of which place Geyan (prisoner No. 6) is chowkeedar, when during a halt made, and the party had got scattered, some eight or ten robbers made a rush at the baggage, and made off with a *petarah*. The prosecutor gave chase, but was beaten back.

“Bhola Gorait, (witness No. 17) of Duleh, sixteen miles distant from the thanna, and where the prosecutor holds some landed interest, and had taken up his quarters after the occurrence, reported it at the thanna on the 13th idem, but it was not

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Geyan, convicted by sessions judge as accessary, but by this court of receiving, and sentenced by one judge of the Nizamut Adawlut, Bundhoo Rujwar acquitted for want of proof, in opposition to sessions judge's conviction.

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until the 15th following that the prosecutor's evidence was taken by the police, when he distinctly stated that he recognized amongst the robbers one like Bikharee (prisoner No. 3), son of Geyan Chowkeedar, having been, as he told the deputy magistrate, formerly stationed in that part of the country.

"Narain Pershad, the moonshee of thanna Nowada, was deputed to investigate the matter, and appears to have first apprehended the father, Geyan, (*vide* his interrogation, No. 35 of 16th May,) although not implicated and put on his defence until the 18th following, No. 30, and through whom his son Bikharee's (prisoner No. 3) and Chitawa's (prisoner No. 5) seizure followed. Witness Deegawa (No. 1) and Tekun (No. 3) depose to their having traced Chitawa and another, *viz.*, Akul (acquitted) to a Chumar's house, where they were lurking, and where, in the roof of the house, the turban No. 1, said to have belonged to the stolen property, was found. Chitawa admitted (No. 8, 16th May,) that his brother Bikharee, Kanoo (prisoner No. 4), and his father Dookhun, and Guneyshee (absconded), a person named by the prisoners generally, had run off with property, which they were concealing, and that some of the articles were with Dookhun at Khanpore. The next day on his apprehension Kanoo at first denied (No. 10, 17th May,) but in a supplementary statement of the same date, (No. 37,) and also Chitawa, (No. 36,) both declared the stolen property would be found in Bikharee Sow's straw rick at the Paharpore cutcherry, as put there by the robbers, and if not there then at Umber Koiree's, of the same village. In these as well as two other supplementary statements of the same date (Nos. 24 and 25) both these prisoners implicate one another, as the party wilfully concealing the information in the first instance, though Chitawa's original statement, the day previous (the 16th, No. 8,) was more in his favor than Kanoo's direct denial of the following day, (No. 10). Bikharee Sow's straw rick was searched, and nothing found, when both prisoners taking the police to Umber Koiree's (witness No. 18) house, caused it to be searched with like result, when both Umber and his brother Nunhoo (witness No. 19), coming forward, stated that whilst watching their cucumber fields, two nights previous, they observed Geyan (prisoner No. 6) and Guneyshee burying something there, who after threatening and warning them, went away, and they lived so much in fear of them that they had told no one. These two Koirees were admitted to give evidence under the deputy magistrate's proceedings of 29th May last. On their pointing out, articles Nos. 6 to 11 were dug up out of their field, as deposed to by witnesses Nos. 12, 13 and 14, and identified by witnesses Nos. 15 and 16.

"In the meantime Bikharee appeared at the police *chowkee* of Hunssoa, distant upwards of ten miles, in charge of Daym

Alee and Jeyha Singh, burkundauses, and almost simultaneously made a full confession before the jemadar of that station, (*vide* his report, No. 12, 17th May,) naming Kanoo, Guneyshee and others as the robbers, and excusing himself as the receiver of the portion of the plundered property only, and which, accompanied by Bundhoo (prisoner No. 10), he had bartered and exchanged at Assa, Ghoojee and Bundhoo Sonar's, three brothers (prisoners Nos. 7, 8 and 9) residing at Hunsooa, whose houses being forthwith searched, articles Nos. 2 to 5, as appertaining to this barter, were forthcoming in the presence of the witnesses Nos. 6, 7 and 8.

"Bikharee repeated his confession before the deputy magistrate, and did not even revoke it before this court. The three Sonars also (prisoners Nos. 7, 8 and 9) have always confessed to their having obtained such property from Bikharee; Nos. 8 and 9 only before this court for the first time pleading their having done so with no guilty knowledge. Bundhoo (prisoner No. 10), too, has always acknowledged his having accompanied Bikharee, and been a party to the barter and exchange. They called no witnesses.

"Kanoo's and Chitawa's statements before the deputy magistrate tend to confirm their extraordinary conduct before the police, as they professed a knowledge of the robbery which they assigned either to Bikharee or Kanoo. Kanoo pleaded much to the same effect before this court, now, however, dropping Bikharee's name, except as regarded receipt of the stolen property, and instead naming one Gangoo as the robber, first-named by Bikharee before this court. Chitawa pleaded 'not guilty,' and set up no defence beyond assigning a frivolous reason for Deegawa, (witness No. 1) and Tekun (witness No. 2) having captured him. They called no witnesses.

"Geyan pleaded 'not guilty,' but had at first stated on 16th May (No. 35,) that he had heard all about the robbery from Bikharee, who had decamped; and before this court, that on the thanna mohurir pressing him he had pointed out Bikharee, who had referred to Assa Sonar. He denied having buried any of the stolen property in Umber Koiree's field, and called three witnesses who knew nothing favorable of him.

"The *futwa* of the law officer convicts Bikharee, Kanoo and Chitawa of highway-robbery on their own confessions, supported by the recoveries of the stolen property or its proceeds after changing hands, and in like manner Assa, Ghoojee and Bundhoo Sonars as the guilty receivers of such stolen property on their own confessions, and declares them liable to discretionary punishment by *akoodut*, but at the same time acquits Geyan and Bundhoo Rujwar (prisoners Nos. 6 and 10), as they neither

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confessed nor were concerned in the recoveries of the stolen property.

"This finding is materially erroneous. Bikharee's confession, Assa, Ghoojee and Bundhoo Sonar's and Bundhoo Rajwar's (prisoner No. 10), self-criminating statements before the jemadar of Humsoda, were duly recorded as confessions before the deputy magistrate, and have been sufficiently confirmed by them before this court, but Kanoo and Chitawa's self-criminating statements before the mohurir of thanna Nowada were never regularly recorded as confessions, nor are they so included, either in the commitment proceedings or the calendar. Thus the confessions of the first five prisoners are beyond question. Bikharee's guilt is foremost, and there only remains for consideration whether the remaining three were guilty receivers of the stolen property, and the fourth accessory thereto or not? Assa, Ghoojee and Bundhoo Sonar's confessions condemn them, corroborated as they have been by the melting down of a portion of the stolen property; No. 2, the division of the wearing apparel; Nos. 3, 4 and 5, between the three brothers, and their attempt to get rid of them during the search, as acknowledged by them before the deputy magistrate; so, in like manner, is Bundhoo Rujwar's (prisoner No. 10) confession. Bikharee's disposal of the articles to the three Sonars was of itself a suspicious barter, and no fair, honest transaction, and of which Bundhoo Rujwar, on his own showing, and as Bikharee's father-in-law, could not have been ignorant. Kanoo's and Chitawa's statements and conduct have never amounted to anything beyond a guilty knowledge of the robbery, and the concealment of the stolen property, which stands confirmed by their taking the mohurir of thanna Nowada to Bikharee Sow's straw rick, and thence to Umber and Nunhoo Koiree's house, whether done to get them into trouble, or from any other cause, is immaterial, since their doing so led to the recovery of the articles, Nos. 6 to 11. The extent of guilt presumable against them, capture with the turban through the witnesses Nos. 1 and 2 being by itself weak, does not, I think, extend beyond accessoryship after the fact. †

"Geyan Rujwar's guilt rests entirely on the evidence of Umber and Nunhoo Koiree's (witnesses Nos. 18 and 19) and the singular recovery through them of the stolen articles buried in their field. Their testimony, doubtless, must be viewed with suspicion, but all the circumstances of the case seem so little to warrant any doubt of conspiracy against the prisoners generally, or in particular, and the position in which these two Koirees voluntarily placed themselves was so dangerous to themselves, and happened so naturally, not until after their own house had been searched, that some grounds obtain for crediting the

motives which induced their previous silence, as arising out of fear of the prisoners, of whom the neighbourhood and themselves especially lived in dread, owing to Geyan having set fire to their house some three years since, and to which Geyan himself also before this court referred. Strange to say, both their statements are incorrect as regards Geyan's having been accused on that occasion, when, as the record shows, he was witness in chief on the prosecution, Khirudur Koiree *versus* Poonwa Rujwar and others on a charge of dacoity, Umber Koiree being a fellow witness on the same side, and in whose deposition mention is made of arson. The prosecution broke down before the sessions on 24th November 1849, and is thus noticed in the Acquittal Statement for that month as a prosecution 'trumped up as a 'most convenient mode of getting rid of more than one trouble- 'some character.' It is quite possible, however, according to Indian village polity, that Geyan, as chowkeedar of the village, himself suspected, might have been put foremost to aid the prosecution of other troublesome characters, and under this view Umber and Nunhoo's connexion with, and dread of, Geyan, stands accounted for, yet without resting Geyan's conviction on their testimony alone, I cannot but regard his instrumentality in the capture of his son Bikharee, another son Chitawa being amongst the prisoners, besides his connexion Bundhoo Rujwar (prisoner No. 10), and the detections more or less affecting all separately, carried out simultaneously, in different jurisdictions, by two police officers and at a sufficient distance apart to render any collusion between these two officers impossible, supported as these investigations have been throughout by repeated confessions, and by such otherwise inexplicable recoveries of the stolen property, without arriving at the conclusion that a whole family and band of thieves have been fortuitously exposed, the police on this occasion being on the *qui vive*, when the sufferer was one of their own craft. I find no grounds, therefore, for doubting the truth of the prosecution, otherwise than as regards the pretended recognition of the robbers at the time of the occurrence: a knowledge, which seems to have grown with the development of the case, is contrary to the prosecutor's original information of the event, and which I accordingly discredit.

"I convict Geyan on strong presumption as an accessory after the fact, and thus differing from the law officer's finding, I would sentence the prisoners as follows:

"Bikharee (prisoner No. 3), for highway-robbery and plunder of property, seven (7) years' imprisonment, with labor and irons, Geyan as accessory after the fact, (prisoner No. 6), and at the same time chowkeedar, five (5) years' imprisonment, with labor and irons.

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"Assa (prisoner No. 7), Ghoojee (prisoner No. 8), Bundhoo Sonar (prisoner No. 9), as receivers of the stolen property, five (5) years' imprisonment, with labor and irons.

"Kajoo (prisoner No. 4), Chitawa (prisoner No. 5), and Bundhoo Rujwar (prisoner No. 10), as accessaries after the fact, three (3) years' imprisonment, with labor and irons."

Remarks by the Nizamut Adawlut.—(Present: Mr. W. B. Jackson.)—"This case is referred as regards Geyan Rujwar and Bundhoo Rujwar; the sessions judge convicts them as accessaries after the fact, the law officer acquits them; the evidence against Geyan is that of Nunhoo and Umber Koirees, who saw the prisoner Geyan hide some property in their field: they pointed out the spot and it was there found and recognised; the conviction of Geyan should therefore be of having and concealing stolen property; this may be held by the sessions judge to render him an accessory to the robbery after the fact, but it seems to be a wrong finding; the having and concealing stolen property is a crime itself, but it may exist without the knowledge of the particular robbery by which it was acquired. I convict this prisoner Geyan of knowingly receiving and concealing stolen property. Against Bundhoo Rujwar there is no proof except a thanna confession, which I do not think sufficient: I would acquit him."

PRESENT :

SIR R. BARLOW, BART., *Judge.*
A. J. M. MILLS, Esq., *Officiating Judge.*

GOVERNMENT

versus

MUSST. DOOKHEE, ALIAS JOYAH.

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CRIME CHARGED.—Wilful murder of Kalleejah Ourut.
Committing Officer, Mr. R. Alexander, officiating magistrate of Mymensing.

Tried before Mr. R. E. Cunliffe, sessions judge of Mymensing, on the 6th August 1852.

Remarks by the sessions judge.—“The prisoner is the wife of Sheikh Amanee, having married him about a month before this occurrence, during the absence at a relative’s of his first wife, the deceased Kalleejah, and from the evidence of Sheikh Amanee, it appears that the prisoner had told him not to bring back his first wife, and that when she returned, about eight or nine days before the murder, she was so annoyed that she said she would not eat or allow the deceased to eat, and on the day in question the deceased having taken five out of seven pows of rice for herself and child, a quarrel ensued about it.

“In the same homestead there live two brothers of Sheikh Amanee and their wives, witnesses Nos. 16 and 17, and witnesses Nos. 12 and 13, and from the evidence of those two women it appears that their husbands had gone to their work and Amanee to a *haut*, and towards evening, one of them having gone for water and the other into the outer cow-house, they heard a scream in the house, and on going there found the body of the deceased lying in the cow-house with the head near the door, with a severe wound on the neck, from which blood had flowed into the yard, and the prisoner sitting on the chest of the deceased with the *koral** and *doo*, before the court, in her hands, and on asking her why she had done so, she said it was her doing, and threatened to do the same to them if they came near. The women having called out, the only man who appeared to be near and he a sick man, witness No. 14, came and found prisoner and deceased as above described, to whom also the prisoner said she would strike any one who came near. One of the women then went and sent Haneef, a younger brother of Amanee, to call him from the *haut*, which he did; and he, coming home, was told by witnesses Nos.

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The prisoner, who murdered her co-wife from motives of jealousy, was sentenced capitally.

* The *koral* weighing one hundred and three *tolahs* with the handle, and the *doo* seventeen and a half *tolahs*, without a handle.

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12 and 13, what had occurred, and saw the prisoner with the *koral* and *ddo* near her, and on asking her she admitted having killed the deceased, and she told him to tie her hands, which he did, and next day she was taken with the body to the thanna. After her husband's return she was seen by the other witnesses and refused to answer to their queries, and saying she would answer elsewhere.

"The cause for committing this deed seems to have been extreme jealousy, for she had told her husband not to bring back his first wife, and that the prisoner and deceased were always quarrelling is proved by the evidence of witnesses Nos. 12, 13, 14, 16, 17 and 18, nor does any ill-will appear to have existed between the deceased and witnesses Nos. 12 and 13.

"The evidence of the civil surgeon shows that deceased had received one wound, four or five inches in length and two in depth, on the right side of the neck, a slight one less than an inch in length above it, another slight one above the eye-brow, and one on the top of the head, two and a half inches in length, dividing the scalp and indenting the skull, and that the first wound was the cause of death, which must have occurred almost immediately, as several large veins had been cut.

"The prisoner at the thanna denied having killed the deceased, who she said had prepared some *koe*, of which witness No. 13 gave her some, and seeing her eating it deceased asked who had given it to her, on which witness No. 12 said she had, and prisoner asking witness No. 12 to divide the rice, she was doing so, when deceased said she would not allow it, and they began to struggle and witness No. 12 threw her down and wounded her on the neck with the *ddo*, and saying to the prisoner I am quarrelling on your account and you do nothing, on which she went and struck the deceased a blow over the eye-brow with the *ddo*, and that she died from the blow given by witness No. 12; that witness No. 13 also struck her on the neck with the *koral* and that they threatened prisoner if she did not put a hand to it; that her husband had charged her because she forbid him to bring his first wife back and because his brother's wives were implicated. In the foudaree she said witnesses Nos. 12 and 13 had killed her, and that she had also thrown a *ddo* at her which struck her; that the deceased quarrelled with witness No. 13, because she had given prisoner some of her *koe*, and that witnesses Nos. 12 and 13 seized her and threw her down in the cow-house near which was a *koral*, which witness No. 12 brought and gave to witness No. 13, who struck her on the neck with it, and that witness No. 12 again struck her and blood flowed; that prisoner threw the *ddo* at deceased because they said they had killed her on her account, and asked her why she did not put a hand to it; that her husband and witnesses Nos. 16 and 17

wished to conceal the body, which she forbid; and therefore was tied and taken to the thanna.

"Before this court she said witnesses Nos. 12 and 13 had killed deceased and wished to conceal the body, and she not allowing it they called witness No. 14, and wished to hide the *koral*, but she would not allow it and took it and sat with it in her hand, and in the evening witnesses Nos. 16 and 17 called her husband and after consulting together tied her hands and said she had killed the deceased. If she had done so she would have run away; that the villagers not coming, her brothers-in-law fell at her feet and asked her to save them, and that she said you have killed her, why should I die?

"Seeing no reason to doubt any part of the evidence, and placing no reliance on the prisoner's assertion, that witnesses Nos. 12 and 13 had killed the deceased, with whom there appears to be no enmity, and seeing no mitigating circumstances in the case, I am under the necessity of recommending that sentence of death be passed upon the prisoner, convicting her, in concurrence with the verdict of the jury, of the wilful murder of Kalleejah Ourut."

Remarks by the Nizamut Adawlut.—(Present: Sir R. Barlow, Bart. and Mr. A. J. M. Mills.)—MR. MILLS.—"It is proved that the prisoner was greatly annoyed at her husband bringing back to his house, against her strong remonstrances, his first wife; that she became so jealous of her that, in the words of her husband, she could not endure the sight of her, and that from the time of her coming back, about eight or ten days before the murder, frequent quarrels occurred between them.

"It would appear that a dispute regarding the division of some rice was the immediate cause of the prisoner committing this savage murder. There were only two females in the homestead, which contains the houses of Sheikh Amanee, the husband of the prisoner, and Kadir and Denghea, his brothers. They are the wives of the two latter persons, and they distinctly and consistently, with but a trifling variation, (before the darogah, they stated that the prisoner sat on the body with the axe and *dāo* in her hands,) depose to finding the prisoner sitting on the body of the deceased with a bloody axe in her hand; to blood flowing, from a wound on the neck, into the court-yard; to a *dāo*, also besmeared with blood, some rice, a seer weight, and a sieve lying on the floor; to deceased admitting that she had done the deed, and to her threatening to kill them if they approached her. This important evidence is fully corroborated by the testimony of Lochun, who was the only male neighbour at home. Hearing the cries of the two witnesses, he hastened to the house and saw the prisoner in the position above described; she admitted to him also that she had killed the deceased, and threatened to take his life in the same manner if he interfered. It is also in evidence

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that the prisoner made similar acknowledgments of her guilt to the husbands of the witnesses Nos. 12 and 13, and to her own husband, on their return, and that the latter tied her hands and feet. To queries of the neighbours, who subsequently came to the house, she returned sharp replies, purporting that she would only make answer to the authorities.

"To the authorities she denounced the witnesses Nos. 12 and 13 as the perpetrators of the murder. To the darogah she admitted that she inflicted a slight superficial wound on the forehead of the deceased with the *ddo*, and to the magistrate that she caused the said wound by throwing the *ddo*. On the trial she admitted her Mofussil and foudaree statements, with the qualification, that she wounded the deceased *after she was dead*, and added that she took the *ddo* and sat with it in her hand, because the accused persons wished to conceal it. I agree with the sessions judge and the jury in placing no reliance on this unsupported accusation. The motive assigned by the prisoner for the accused killing the deceased, is altogether insufficient and improbable; the accused and the deceased had all lived in the same compound for years, and it is proved that they had been always on the most friendly terms. It is not credible that they could have espoused the new comer's quarrel, without grave provocation. Further, the prisoner has not attempted to shake the evidence of Lochun; it positively and consistently supports the testimony of the accused. I can discover no grounds for imagining the prisoner to be innocent, and in concurrence with the opinion of the judge and the jury, I would convict her on violent presumption of wilful murder.

"There can be no doubt that the inciting cause to the murder was furious jealousy. It was a cruel murder; the nature of the weapons used, and the position of the wounds, denote a murderous purpose, and her guilt is aggravated by her fixing a false charge on innocent persons. Seeing no extenuating circumstance in the case, I would sentence the prisoner capitally."

SIR R. BARLOW.—"I fully concur in the conviction and in the issue of a sentence of death upon the prisoner, Musst. Dookhee, *alias* Joyah."

PRESENT :

SIR R. BARLOW, BART. *Judge.*

GOVERNMENT

versus

BUDDEENATH DEB (No. 19), LALL SINGH (No. 20),
SHEIKH DHALEE (No. 21), SHEIKH ABDOOLLAH
(No. 23) AND SHEIKH MODHOO (No. 24).

CRIME CHARGED.—No. 19, riotously and illegally assembling, attacking *haut* Juggutgunge and severely wounding Sheikh Someer Meer. Nos. 20, 21, 23 and 24 ; 1st count, being accomplices in the above crime ; 2nd count, being accessaries before and after the fact to the above crime.

CRIME ESTABLISHED.—No. 19, riotously and illegally assembling, attacking *haut* Juggutgunge and severely wounding Sheikh Someer, and Nos. 20, 21, 23 and 24 of being accomplices in the above crime.

Committing Officer, Mr. A. Abercrombie, assistant, exercising the powers of joint magistrate, at Jumalpoore, zillah Mymensing.

Tried before Mr. R. E. Cunliffe, sessions judge of Mymensing, on the 15th July 1852.

Remarks by the sessions judge.—“ From the evidence of the eye-witnesses it appears that disputes existed between Taramonee Chowdraine, proprietor of *haut* Juggutgunge, and Chunderkanth Surma, proprietor of *haut* Sumbhoogunge, which are opposite each other and only separated by a small *nullah*, and that on the day in question a large body of people crossed over from Sumbhoogunge to attack the other *haut*, and on witnesses Nos. 1 and 2 remonstrating, the leaders ordered them to be beaten. No. 19 threw a *jata*, a kind of spear, at witness No. 1, and caused a severe wound on the calf of the leg, from five to six inches in length, a small portion of which was still unhealed, and on his falling he was carried off to Sumbhoogunge, and four or five days after the arrival of the darogah found in No. 22's (acquitted) cow-house. He says himself that he was first taken to No. 19's house, and shortly before he was found, to the cow-house, when probably it was unsafe to keep him any longer. In their defence all the prisoners set up an *alibi*, the evidence in support of which I concurred with the law officer it had failed to prove, and I have passed a rather severe sentence, as it is necessary to put a stop to such disturbances. If proprietors of land choose, as they are entitled to do, to set up *hauts* on their own land close to another *haut*, they must permit the frequenters of them to go to whichever they please. The *futwa* of the law officer convicts No. 19 of the crime charged, and Nos. 20, 21,

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Appeal re-
jected, there
being no
grounds for
disbelieving
the evidence
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23 and 24 as accomplices in the same, and I have passed a severe sentence upon No. 20, as he appears to have been one of the chief of the party and apparently employed in seizing people going to the other *haut*."

Sentence passed by the lower court.—No. 19, to be imprisoned, with labor in irons, for five (5) years; No. 20, to be imprisoned without irons for four (4) years, and to pay a fine of rupees one hundred (100), and Nos. 21, 23 and 24 to be imprisoned, without irons, each for three (3) years, and to pay a fine of rupees fifty (50) in lieu of labor, or, in default of payment, to labor.

Remarks by the Nizamut Adawlut.—(Present: Sir R. Barlow, Bart).—"There is no ground for interference with the conviction and sentence of the sessions judge as recorded in this statement. Numerous witnesses have given evidence of the prisoners being present on the occasion of the attack on the Juggutgunge *haut*, the prisoners are known to the witnesses. The usual defence of *alibi* is set up by all the prisoners, but they have failed altogether in establishing it. Their appeal is rejected.

PRESENT:

W. B. JACKSON, Esq., Judge.

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MUSST. BOODHNEE GOALIN

versus

MUNGUR GOALA.

The sessions judge having referred the case, because he considered the act of the prisoner amounted to aggravated culpable homicide and deserved punishment beyond his powers to inflict, the court convicted him only of culpable homicide, and sentenced him to seven years' imprisonment, with labor in irons.

CRIME CHARGED.—Culpable homicide of Karoo Goala, husband of the prosecutrix.

Committing Officer, Mr. F. C. Fowle, magistrate in charge of Nowada sub-division, zillah Behar.

Tried before Mr. T. Sandys, sessions judge of Behar, on the 29th July 1852.

Remarks by the sessions judge.—"The deceased was the prisoner's eldest brother and head of the family, living in common at Baghee, but for the last three or four years the prisoner had resided apart in the neighbouring village Bullooah, not half a mile distant, without, however, any regular family separation, according to Hindoo usage, having taken place.

"On the afternoon of the 30th May last, while the prisoner and Musst. Neeria (witness No. 1) were returning home to Bullooah they met the deceased at the Gungta reservoir between the two villages. An altercation commenced between the two brothers about their affairs, and on the deceased's observing that that was not the place to settle them, the prisoner snatched the deceased's stick out of his hand, and repeatedly beating him, left

him senseless on the spot. Sohun Doosad, of Baghee (witness No. 2), passing by with a vessel containing toddy, and with which Musst. Neeria says she endeavoured to revive the deceased, confirmed Musst. Neeria's evidence to the foregoing effect, which is further indifferently well supported by Dhunraj Mooshur (witness No. 8) of Bullooah, as to what he saw on reaching the spot in answer to their outcries. When the trial commenced before the sessions, there was no satisfactory evidence sent up to show how the deceased had reached his home from the Gungta reservoir, whilst up to this stage of the trial both prosecutrix and Musst. Neeria had favored the prisoner's plea of his having carried his brother home. The mother, Musst. Sooneya, (witness No. 10), the younger brother, Munoruth Goala, (witness No. 9,) Musst. Sooneya's nephew, Bhuttun Goala, (witness No. 12,) and Neeroo (witness No. 11), chowkeedar of Baghee, whose depositions (excepting witness No. 12,) had originally been taken by the police (*vide* papers Nos. 11, 12 and 15,) were called before this court, and though, excepting the chowkeedar, from their near relationship, most unwilling witnesses, carefully avoiding, and in the mother's instance even revoking the little she had originally stated on hearsay, tending directly to criminate the prisoner, yet they indisputably established the fact of their having found the deceased in a senseless state at the Gungta reservoir, and thence carried him home, where he lingered in the same state, until released by death during the night.

"An inquest was held on the body on the 31st May, witnessed by Jhundoo and Choolun Koirees, (witnesses Nos. 3 and 4,) which proves the deceased had been cruelly beaten. There were two severe bruises under the left ear, five bruises on the left side, and one on the back, besides slight scratches. The body reached the deputy magistrate's station of Nowada on 1st June, according to the native doctor's report of that date, in too decomposed a state to admit of his making any report regarding it. An officer, sufficiently qualified to hold a *post mortem* examination on bodies reaching that distant out-post, might, in many cases, essentially aid the ends of justice.

"The prisoner was found apprehended in the hands of the village authorities by the police; before whom he confessed, as verified by Jehul Koiree and Gundowree Roy (witnesses Nos. 5 and 6) 'that he had been in liquor. He could not tell what had possessed him; that he had struck his brother down senseless 'with a blow of his stick across the temple.' This confession he revoked before the magistrate, pleading instead that his brother had been drinking, and whilst returning home he had been attacked by thieves at the reservoir, whence hearing his brother's outcries he ran up and there found him felled to the ground, and Sohun (witness No. 2), and Dhunraj (witness No.

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8), running off. On questioning the deceased, he said these two persons had beaten and robbed him. He took his helpless brother up and carried him home. He repeated the same kind of defence before this court, with the addition, for the first time, and at the close of his defence, of there having been an intrigue between Sohun, (witness No. 2,) and the prosecutrix to get rid of the deceased. He called no witnesses before this court, but before the magistrate he had summoned two, one of whom, Kishendyal Beldar, appears to have been an imaginary person (*vide* prisoner's interrogation of 11th June, No. 37,) and the other, Tarachand, deposed to his having heard that the prisoner had killed his brother.

"The *futwa* of the law officer convicts the prisoner of the culpable homicide of Karoo Goala and declares him liable to severe mulct for bloodshed by *deeyut mooghuliza*.

"This is a sad case of fratricide, originating, apparently, in ill-feeling of some standing between the two brothers, not without some grounds on the prisoner's part, consequent on the deceased's independent and irresponsible management of the joint family affairs, as elicited from those unwilling witnesses, the younger brother, Munoruth, and their mother, Musst. Sooneya, although, as far as the evidence and the circumstances of the case go, there could have been nothing premeditated in the *rencountre*, which was purely accidental. Still the evidence for the prosecution must be regarded with suspicion, as rather suppressive of the truth than exaggerating it. Every disposition had been shown by the prosecutrix and the almost sole eye-witness, Musst. Neeria, as also the other witness, Sohun, to screen the crime, by aiding the prisoner, in the pretences set up by him, either as to his having been in liquor, or that he had brought his dying brother home, saying he had been killed by thieves, whilst the testimony of the witnesses, Munoruth, Musst. Sooneya, Neeria and Bhut-tun satisfactorily establishes that the prisoner did nothing of the kind, as would have been most natural had there been a particle of truth in the defence set up by him, which, in other respects also, is both inconsistent and unsupported. I am not satisfied that either the deceased or the prisoner could have been in liquor, and even if they had been, it could not stand in mitigation of having killed his brother. The inquest proves the beating to have been violent and repeated, not the act of a drunkard but a merciless opponent. The prisoner had not a scratch on his person, and there is much in the evidence, from first to last, to maintain the fact, that although himself armed with a stick he seized his brother's (who it is allowed on both sides was returning from a journey to Nowada) out of his hand and broke it to pieces in the cruel beating he inflicted on him. As much also stands admitted by the prisoner in his confession before the

police when interrogated as to the weapon used by him. Concurring, therefore, in the prisoner's conviction, I can regard his crime in no light short of an extremely aggravated culpable homicide, demanding punishment beyond the powers of this court. I beg to recommend his being sentenced to fourteen (14) years' imprisonment, in labor and irons, and in banishment."

Remarks by the Nizamut Adawlut.—(Present: Mr. W. B. Jackson.)—"The evidence proves that a meeting took place between the prisoner and his brother, the deceased, on the return of the latter from Nowada; that after some altercation about some property, the prisoner snatched the stick from the hand of the deceased and beat him till he fell, and then continued to beat him: the deceased died that night apparently from the beating: I convict the prisoner Mungur of culpable homicide of his brother and sentence him to seven (7) years' imprisonment, with labor and irons."

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PRESENT:

W. B. JACKSON, Esq., Judge.

GOVERNMENT PLEADER ON THE PROSECUTION OF
JEETUN

versus

SOOKUN KAHAR (No. 1), JOBRAJ ROY (No. 2) AND
NUNHOO KOIREE (No. 3).

CRIME CHARGED.—1st count, No. 1, culpable homicide of Lila Goala, father of Jeetun Goala, prosecutor; 2nd count, No. 1, kicking the deceased from the effects of which he died; 3rd count, Nos. 1 to 3, oppression of Jeetun Goala, prosecutor.

Committing Officer, Mr. F. C. Fowle, magistrate of Behar.

Tried before Mr. T. Sandys, sessions judge of Gya, on the 23rd August 1852.

Remarks by the sessions judge.—"The three prisoners are servants employed at a monastery, in the village of Balia. Jeetun, the prosecutor, a middle-aged person, of the same place, grazed the cattle belonging to the monastery, and on the evening of the 20th July last, returned home with the herd, minus a calf. This occasioned altercation, in which Jobraj Roy (prisoner No. 2) and Nunhoo Koiree (prisoner No. 3), on Sookun Kahar's (prisoner No. 1) order, pinioned the prosecutor inside the court-yard of the monastery. The prosecutor's punishment brought up his old father Lila, who endeavouring to release his son, got a kick from Sookun, which knocked him down, and caused his death during the night.

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A conviction cannot be had on a charge of oppression without specification of the act itself.

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others.

"The facts above stated are corroborated by five eye-witnesses, Nos. 1 to 5. There were no marks of ill-usage on Jeetun, the prosecutor's person, beyond those caused by the pinioning.

"The inquest held on the body the next day, showed that no external marks of violence were distinguishable, and consequent on the distance and season of the year the forwarding the body for medical examination was impracticable.

"The three prisoners pleading 'not guilty' have always urged ignorance of the cause of the deceased's death, or of his having been present on the occasion; at the same time admitting the dispute with the prosecutor Jeetun about the missing calf, yet denying having pinioned him, although Sookun before the police acknowledged having given him a slap, and before this court, that on the prosecutor's threatening to throw himself down a well, that Jobraj (prisoner No. 2) detained him. Jobraj has always stated that he separated the prosecutor and Sookun whilst quarrelling, and that he had detained the prosecutor until the village people arrived to prevent his throwing himself down a well. Nunhoo's defence confines itself to his having accompanied the prosecutor to look after the missing calf. Neither of the three has ever called any witnesses.

"The *fiitwa* of the law officer convicts Sookun of the culpable homicide of the deceased, and declares him liable to punishment for the price of blood by *deeyut*, but acquits Jobraj and Nunhoo, on the singular grounds, that there is nothing criminal in a servant or slave being simply chastised by his master.

"The defence is utterly weak and frivolous on its own showing, whilst the evidence for the prosecution is simply and naturally told, free of all exaggeration, trustworthy, and proves that the prosecutor Jeetun had been very harshly treated for a very venial neglect, the missing calf having been found the next morning in a village. The habit of pinioning menials, and that very cruelly, when it leaves marks, as it did in the present instance, for the slightest offence, is too common amongst the natives, and generally leads to much wanton cruelty and outrage. The prisoners must have proceeded to some lengths ere the old father would have interfered. The witnesses depose to Jobraj and Nunhoo having pinioned the prosecutor Jeetun, and that Sookun Kahar, who was on a raised floor, kicked at the deceased, which took effect either on his breast or stomach, whilst he was below, attempting to release his son. He was a very old man, though hale and still able to work. Although the fatal result may thus have been almost accidental, yet it originated in the three prisoners' joint oppressive acts, which I cannot regard as excusable in any one of them, but criminal in all three. Concurring with the law officer as to Sookun, I convict him of the culpable homicide of the deceased and sentence him to one (1) year's imprisonment

in labor, commutable to a fine of fifty (50) rupees, and differing with the law officer, convict Jobraj and Nunhoo on the third count of oppression of Jeetun, prosecutor, and would sentence each to six (6) months' imprisonment in labor, commutable by a fine of two hundred and fifty-one (251) rupees."

Remarks by the Nizamut Adawlut.—(Present: Mr. W. B. Jackson).—"The sessions judge convicts Jobraj and Nunhoo prisoners on the third count 'oppression of Jeetun Goala' in the record *ظلم و بدعت اوپر جیتن گوالہ*; this is not in my opinion a substantial charge or sufficiently specific to admit of the party charged making a defence; and a conviction on so vague a charge does not subject a person to punishment. Oppression may be exercised in many ways independent of personal violence or detention. I would release the prisoners, as they are acquitted on the other charges, and this charge will not sustain a criminal conviction of any kind."

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KAHAR and
others.

PRESENT :

A. J. M. MILLS, Esq., *Officiating Judge.*

GOVERNMENT

versus

NAIK (No. 2), LEELAH (No. 3), KHADOO (No. 4), RAMKURN (No. 5), GUNGABISSOON (No. 6), ACHRUJ (No. 7), IMRUT LALL (No. 8), SHEWBURT (No. 9) AND JOOTHUN (No. 10).

CRIME CHARGED.—Culpable homicide of Ramburut Dosad, a thief.

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CRIME ESTABLISHED.—Culpable homicide of Ramburut Dosad, a thief.

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Committing Officer, Mr. A. A. Swinton, magistrate of Shahabad.

Case of
NAIK and
others.

Tried before Mr. W. Tayler, sessions judge of Shahabad, on the 28th April 1852.

Remarks by the sessions judge.—"The prisoners are charged with wantonly killing the deceased who was seized in the house of witness No. 1, which he, the deceased, had burglariously entered.

The prisoners were sentenced for the culpable homicide of a thief by maltreatment after seizure.

"The facts established by the evidence are that on the night of the 25th February, witness No. 1 being roused at midnight from his sleep by something touching his body, perceived a man in the room, and seized him, with the help of his mother, who was also aroused.

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others.

"They then shouted for help, when prisoner No. 2, who is the chowkeedar, and Nos. 3 and 4, who are goraitis, came to the house. They then gave the deceased in charge to them. Prisoners Nos. 5 and 10 then came in, and they tied the deceased by his hands and feet to a large bamboo belonging to prisoner No. 3, and beat him with their sticks and fists, and made witnesses Nos. 1 and 2 carry him off to a tree at a short distance from the house.

"Witnesses Nos. 1 and 2 returned to their house and the five prisoners remained.

"In the meanwhile the prisoners Nos. 6, 7, 8 and 9, coming out of the house joined the party. Leelah Dosad (No. 2) called upon them all, under an imprecation, to join in beating the deceased; all then struck him, and the next day the chowkeedar (prisoner No. 2) took him to the thanna, where he expired almost immediately.

"There is some ambiguity in the evidence as respects the participation of prisoners Nos. 6, 7, 8 and 9 in the assault, the witnesses distinctly charged them with the crime at the thanna, but did not mention them before the magistrate or before this court *until questioned*.

"In other cases this might serve to throw discredit upon the evidence, but the circumstance is to my mind fully accounted for by the fact that these four prisoners are Brahmmins, the saving of whose sacred persons by mere suppression of their names until questioned would be held as an act of piety.

"The medical evidence is distinct and conclusive as to the death of the deceased merely caused by the blows received.

"Prisoners Nos. 2, 3, 4 and 5, state that on hearing a noise they went to Furzand Jolaha's house, where they saw Chumun and Furzand Jolaha beating the thief, but they did not maltreat him. Nos. 2 and 3 had no witnesses to offer. No. 6 says that he heard a noise without and went towards Furzand Jolaha's house and then heard the noise attending the maltreatment of the thief by Chumun and Furzand Jolaha's. No. 7 says that he was in his sugar-cane field, when he heard that a thief was caught. No. 8 affirms that on the night the occurrence happened he was one mile off from the place, in his own field, but on the following morning heard that a thief was caught. No. 9 states that when he heard a noise he started from his house and on his way he saw that Chumun and Puddaruth were taking the thief bound hand and foot lashed to a bamboo. No. 10 states that the night this occurrence took place, he was in a village called Kytha, three miles off; the following morning, when he came home, he heard that the thief was apprehended. The evidence adduced in support of the pleas was undeserving of credit. The *futwa* convicts the prisoners of culpable homicide.

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"In considering the measure of punishment adequate to the offence of the several prisoners, I observe that the act is one of extreme brutality. The deceased was alone, unarmed and lame. He had been secured before the chowkeedar and goreaits arrived, and there was not the slightest necessity for violence of any kind to prevent his escape.

"Conceding that the anger and irritation of the moment is some justification for maltreating a man caught in the act of a felony. The deliberate and cruel character of the maltreatment in this case demands a severe penalty.

"Leelah Dosad (prisoner No. 3) appears to have been the leader throughout every stage of the proceedings. It was to his bamboo that the unfortunate man was lashed, with his head downwards like a wild beast, and after he had been severely beaten and carried away from the house, it was by his exhortation and incentive that the other prisoners again brutally assaulted the unhappy man.

"Looking, therefore, at the wanton and aggravated cruelty evinced by the prisoner, I sentence him to seven (7) years, with labor in irons, and all the rest of the prisoners, the degrees of whose guilt it is difficult to discriminate, to three (3) years' imprisonment."

Remarks by the Nizamut Adawlut.—(Present: Mr. A. J. M. Mills.)—"All the prisoners, save No. 3, have appealed, urging the pleas advanced in their defence, as also the improbability of their assaulting a person who had not injured them. This is a brutal case of thief-killing, the thief was seized by the owner of the house and made over unhurt to the prisoners Nos. 2, 3 and 4, the village police officers, who, with the other prisoners, so cruelly maltreated him as to cause his death the next day. The prisoner No. 2, who should have protected the deceased from injury, instigated and encouraged this most unjustifiable assault. The medical officer deposes to finding the mark of a blow on the left side of the forehead, which laid bare the bone, the mark of a bruise on the front part of the neck as if a stick had been violently pressed against it, several bruises on the chest, and to four of the ribs on the right side being dislocated from the sternum, wounding the lung on the right side. The guilt of the prisoners is fully established, and I see no reason to interfere with the conviction and sentence of the sessions judge."

PRESENT:

W. B. JACKSON, Esq., Judge.

GOVERNMENT PLEADER,

*versus*POONEET LAL (No. 1), BUNDHOO LUHAREE (No. 2),
AND SOORJUN KOORMEE (No. 3).

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Case of
POONEET LAL
and others.

Held that the statements made by the prisoners not having been contradictory as charged, they were entitled to an acquittal, there must be a fraudulent object to constitute perjury.

CRIME CHARGED.—No. 1, suborning prisoners Nos. 2 and 3, to perjure themselves on the 23rd September 1850. No. 2, perjury, in having, on the 23rd September 1850, intentionally and deliberately deposed, under a solemn declaration taken instead of an oath, before Mr. J. Macleod, deputy collector, 'that in the month of Cheyt 1252 F. S., date I do not remember, Bishnath Naek died from natural cause; that Moorlee Naek, son of the deceased, is the sole proprietor and occupant of his property, and that there is no other heir of the deceased. I know this from my residing always in the neighbourhood;' and in having on the 25th February 1852, again intentionally and deliberately deposed, under a solemn declaration taken instead of an oath, before Mr. R. F. Hodgson, collector, 'that Bishnath Naek died in Gya, and that my house is close to his, and that Bishnath Naek died about ten years ago,' such depositions being contradictory of each other on a point material to the issue of the case. No. 3, perjury, in having, on the 23rd September 1850, intentionally and deliberately deposed, under a solemn declaration taken instead of an oath, before Mr. J. Macleod, deputy collector 'that I know Bishnath Naek died in the month of Cheyt 1252 F. S., from natural cause; that Moorlee Naek is the proprietor and occupant of his property, and that with the exception of Moorlee Naek there is no heir of the deceased, and I know these from my residing in the same neighbourhood,' and in having, on the 25th February 1852, again intentionally and deliberately deposed, under a solemn declaration taken instead of an oath, before Mr. R. F. Hodgson, collector, 'that I did not depose to the demise of Bishnath Naek, in the month of Cheyt 1252 F. S., but I have stated that Bishnath Naek died about eight or nine years ago,' such depositions being contradictory of each other on a point material to the issue of the case.

Committing Officer, Mr. F. C. Fowle, magistrate of Behar.

Tried before Mr. T. Sandys, sessions judge of Behar, on the 6th August 1852.

Remarks by the sessions judge.—“Katimghurra, the property of one Bishnath Naek, whilst pending settlement before the revenue authorities, was contested by two applicants, Moorlee Naek, as sole administering heir to Bishnath Naek, deceased, and

Achaeybur Tewaree, under a mookurree title granted him by the said Moorlee Naek, on 9th of June 1841. Mr. Deputy Collector Macleod's decision of 31st December 1851, upheld Moorlee Naek's title as proprietor, and Achaeybur Tewaree's as mookurree-reedar; whilst the settlement, however, was pending, Moorlee Naek had filed, through his attorney Pooneet Lal, (prisoner No. 1), in support of his title, a *fowteenama*, dated 11th September 1850, which purported that Bishnath Naek had died on 15th Cheyt 1252, corresponding to 7th April 1845. This document had been duly verified by Bundhoo Luharee (prisoner No. 2) and Soorjun (prisoner No. 3), as two of its subscribing witnesses, before Mr. Deputy Collector Macleod, on 23rd September 1850. Whilst comparing this document with the old settlement records, usually examined on such occasions, the date of decease given therein, or 15th Cheyt 1252, was shown to be false by a *perwannah* of superintendent of settlements of 5th June 1841, and its annexments, also by a petition of Moorlee Naek himself, through his attorney Narain Lal of 14th idem, which proved that Bishnath Naek's decease took place subsequent to 24th March 1841, and prior to 11th June following, *i. e.*, during 1248 F. Whatever fraud such false date of decease, or Cheyt 1252, may have been intended to cover with this exposure did not further develop itself, for, as observed by Mr. Macleod, up to this stage of the proceedings there had been no direct denial of Achaeybur Tewaree's title by Moorlee Naek, and the settlement proceedings closed as shown. Although it must at the same time be remarked, that Moorlee Naek's petition through Pooneet Lal on 21st March 1851, whilst repeating in its ninth line the same date of decease, or 15th Cheyt 1252, in indistinct and general terms accused Achaeybur Tewaree of fraud and forgery when applying to him the words *sureybbazee* and *bu duroostugee kayhuz*.

"On the settlement proceedings coming before Mr. Collector Hodgson, together with Moorlee Naek's appeal therefrom, he summonsed both Moorlee Naek and the two prisoners, who, as witnesses, had verified the *fowteenama* before Mr. Deputy Collector Macleod, on 23rd September 1850. Moorlee Naek himself denied after having undergone a self-condemnatory interrogation before the collector, and the two prisoners as detailed in the indictment, deposed before that functionary at variance to what they had done before Mr. Deputy Collector Macleod, when swearing to Bishnath Naek's demise in Cheyt 1252. This is the gravamen of the charge against the two prisoners, legally committed by the magistrate on the collector's requisition. The other prisoner, Pooneet Lal, the attorney, was separately committed for forgery, uttering forgery, and jointly in the present calendar for suborning the other two prisoners to perjure themselves, but as will appear in the prescribed statement of Jail Delivery for this

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month, he stands acquitted on both trials, which showed a total want of legal proof; that as between attorney and client, he had ever acted under a guilty knowledge of the crimes, with which he stood charged.

"Both the contradictory depositions of the two prisoners, those of the 23rd September 1850, and the 25th February 1852, have been proved by the attending ministerial officers on each occasion. The prisoners in their defence, assisted by counsel, seek to turn certain peculiarities of form in recording each oath to their own advantage.

"Those before Mr. Deputy Collector Macleod simply record them as 'on oath' and before Mr. Collector Hodgson 'on religious oath,' yet they were administered according to the official routine of both offices, and it is self-manifest, that those of 23rd September 1850, in particular, would, *ipso facto*, have been valueless had they not been duly taken on oath. Both also are countersigned by the attorney, Pooneet Lal, whose duty it then peculiarly was to see that the depositions of these witnesses were thus duly taken and corresponded to his client's document; Soorjun's deposition bears his Hindee signature, and at the foot of it there is an order by the deputy collector of the same date recording 'that these two witnesses' evidences had been taken 'on oath, their dismissal, and directing the issue of the ordinary 'notification.'

"The prisoners plead 'not guilty,' urge the validity of the *fowteenama* as proving the heirship, which had never been questioned, and to which they had duly testified, at the same time assigning frivolous pretences as to their being ignorant men; to their evidences having been as above noticed informally taken, and aggravating their offence, but for which I regard their counsel as more blameable than themselves, by hazarding the reckless, and under all the circumstances of the case, the palpably false assertion, that the word 'oath' had been smuggled into their depositions by the *amla*, subsequent to the commencement of the investigation. They called witnesses in proof of their being ignorant persons, some of whom at the same time acknowledged them to have been Bishnath and Moorlee Naek's neighbours.

"The *futwa* of the law officer, admitting the contradictory nature of the prisoners' depositions, at the same time argues that the original ones before the deputy collector may have originated in error, and not finding proof of their having deliberately and intentionally perjured themselves, acquits them.

"The forgery of a document like a *fowteenama* may be either complete or partial, and perjury in support of it may take either shape, just as is the case in the present instance. There never had been any question as to the validity of the heirship,

but its date, which was falsified, as is fairly presumable, in the total absence of any other explanation, and according to the dates

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Bishnath Naek's death, according to the *fourteen* *nama* and the two prisoners' evidences, took place in Cheyt 1252, corresponding to April 1845.

Ditto ditto, according to records of 1841, between March and June, of that year, Mooglee Naek 'mookuraree' to Achabybur Tewaree, dated 9th June 1841.

of the documents concerned, and given in the margin, in the attempt to prejudice another's rights, since it turned out unsuccessful, from the timely detection which took place with the production of the 1841 records. The prisoners' crimes therefore hinge on their having falsely deposed, *malò animò*, before the deputy collector to Bishnath Naek's having dismissed in Cheyt 1252, as stated by the attorney Pooneet they were called as neighbours of deceased according to his own directions to his client. It is there-

fore impossible to excuse them as neighbours on the score of ignorance in so plain and simple a matter as the self-distinguishing difference between so many years as had intervened between 1248 and 1252. Moreover when thus precisely deposing to year and month, they must be held accountable thereto, or no court will be safe in the verification of documents. Their self-accepted duty was a plain and unmistakeable one to depose to the heirship and its date. The date, Cheyt 1252, stands plainly recorded in their depositions in support of the document itself giving the 15th of that month and year, adverse to which, or in any way defective of it, they would never have deposed in the presence of the attorney Pooneet Lal, with his client's document in his hands, as vouched for by his countersignature to their depositions. Pooneet Lal, on this occasion, may or may not have had a guilty knowledge of the correct date of decease, but there can be no doubt as to the prisoners' guilt in this respect, thus called and attending to verify a document in which the date thus given was designedly false, and in support of which they deposed, or even for argument's sake had they not 'voluntarily' deposed thereto, as was the case according to their affidavits, in satisfaction of the forms of public business, they or others would have been required to do so, ere the document itself could have become valid, as in fact it did on their depositions. The inference, therefore, is reasonable, that in a case like this, in which it was so necessary that the date of decease should be deposed to, that witnesses specially called for such a purpose did so depose, and in conformity to which the attorney Pooneet Lal himself acted, by repeating it in his first petition of 21st March 1851, though most carefully omitting it in all his subsequent ones. In any case the prisoners could not have failed to hear the date mentioned in their affidavits when read out before them in open court, and by not revoking it then, or even subsequently, they confirmed it,

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Prisoners I. A.
and others.

and made it a deliberate act of their own. Unable, therefore, to discover the slightest reason for doubting the prisoners' guilt, I convict them of wilful perjury, but as under all the circumstances of the case greater rogues must have escaped, I would suggest the sufficiency by way of example of their being sentenced for such an offence to one (1) year's imprisonment, with labor and in irons."

Remarks by the Nizamut Adawlut.—(Present: Mr. W. B. Jackson).—"Pooneet is acquitted by the sessions judge, but the other two prisoners are convicted by him of perjury, the law officer acquitting them.

"The perjury charged is not that of stating anything which is untrue, but making two contradictory statements both on oath, the contradiction is stated to be found in the depositions of the 23rd September 1850, and those of the 25th February 1852.

"On the 23rd September 1850, the two prisoners Soorjun and Bundhoob were called on to verify their signature, as witnesses to a *fowteenama* in Persian, to the effect that Bishnath Naek died on the 15th Cheyt 1252; their Hindee signatures on the document are guarded by the additions that they know Moorlee is Bishnath's son and heir; the signatures therefore attest nothing more; these witnesses can neither read nor write; the depositions of the 28rd September 1850, further, are to the effect that Bishnath died in Cheyt 1252, and their knowledge of this is stated to arise from the fact that they were his neighbours, not that they saw him die: but that as neighbours they understood him to have then died. The depositions of 25th February 1852, deny that the deponents said on the 23rd September 1850, that Bishnath died in Cheyt 1252, and declare that they then only said he died some eight or nine or ten years ago, and they still adhere to this statement.

"Now this is not a contradictory statement; it is a denial of what is recorded as their former statement. It is possible there may be perjury in their having stated what is false on the 23rd September 1850, but this is not proved, nor is the indictment so laid. The indictment is for perjury in making contradictory statements; it is certainly not a contradiction to say I did not state on the 23rd September 1850, what is written down; but besides this it does not appear to me that the assertion of the knowledge of the death in Cheyt 1252, is given as personal knowledge, it is rather of the nature of hearsay information. In February 1852, these witnesses, two years after having said that they heard as neighbours that Bishnath died in 1252, say they do not know when he died exactly, but think about eight or ten years ago: this brings the time of death within a year of the 1252, previously mentioned; however there is no contradiction such as to constitute perjury.

"The judge says, 'whatever fraud such false date of decease, or Cheyt 1252, may have been intended to cover, with this exposure did not further develope itself.' It is plain, therefore, that the fraudulent intent of the contradiction was not made out even on his own showing; and in the absence of such intent the conviction was wrong. I acquit both prisoners and direct their release."

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Case of
POONNET LAL
and others.

PRESENT :

A. J. M. MILLS, Esq., *Officiating Judge.*

NUBEEN SOW MUNDUL

versus

MUTHOOR ROY BHOYAN (No. 3), HUREE ROY BHOYAN (No. 4), SOBA ROY BHOYAN (No. 5), SHAM ROY BHOYAN (No. 6), LUKHEE ROY BHOYAN (No. 7), PAROO ROY BHOYAN (No. 8), MUNJEEL ROY BHOYAN (No. 9) AND BHOBANEE ROY BHOYAN (No. 10).

CRIME CHARGED.—1st count, dacoity committed in the prosecutor's house, whence property valued at rupees 17-10-8 was plundered; 2nd count, being accomplices in the above-mentioned dacoity.

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Case of
MUTHOOR
ROY BHOYAN
and others.

CRIME ESTABLISHED.—Dacoity.

Committing Officer, Mr. W. Ainslie, officiating magistrate of Beerbhoom.

Tried before Mr. R. B. Garrett, officiating sessions judge of Beerbhoom, on the 10th July 1852.

Remarks by the officiating sessions judge.—"The house of the prosecutor in the village of Gussroo was attacked on the night of the 26th May last, by a gang of dacoits, ten or thirteen in number, and plundered of property valued at rupees 17-10-8.

The confessions of the prisoners, urged by them in appeal to have been extorted, held to be sufficient for upholding their conviction.

"Ere the dacoits had effected an entrance into the premises, the prosecutor and all the inmates of his house, hearing the noise and seeing the light of the torches, hurried out and escaped into the village, and did not return until the gang had taken their departure, when they observed the usual indications of violence and robbery. On the following morning a portion of the plundered property, apparently thrown away by the dacoits in their retreat, was discovered about half of a coss from Gussroo in a northerly direction.

"Early on the 27th May, Kishen Dyal Misr, the burkundauz of the neighbouring pharee, and later in the day, the darogah

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of thanna Nungoolea, arrived at the spot, and were unsuccessful for some days in obtaining any clue to the perpetrators of the crime.

"On the 1st June, Kishen Dyal Misr told the darogah, that on his first arrival at Gussroo he had met there Bhobanee Roy, who resides at Muldanga, distant some seven or eight *coss*; that his being so far away from his house at such an early hour struck him as being suspicious, and he recommended that he should be apprehended. Kishen Dyal Misr accordingly obtained a *hukumnama*, and on the 2nd June proceeded to Muldanga to the house of Bhobanee Roy, who happened to be absent, but he there found, Muthoor Roy, Huree Roy and Soba Roy (prisoners Nos. 3, 4 and 5), whom he took into custody, and immediately sent word to the darogah. Early on the morning of the 3rd June, the mohurir of the thanna arrived, when it is very evident these three persons made a verbal confession, which was not written down, as no respectable attesting witnesses were to be found there, for he immediately proceeded, after forwarding them on to the darogah, to apprehend the parties they had named as their accomplices, *viz.*, prisoners Nos. 6, 7, 8 and 9, who also confessed to having joined in the dacoity.

"No property has been discovered in the possession of the prisoners, but they have all fully acknowledged their guilt both in the Mofussil and in the magistrate's court.

"In this court they all plead 'not guilty', and declare that their confessions were forced from them in the Mofussil, and that they were intimidated into repeating the same statements before the magistrate by the threats of the darogah.

"The witnesses, called for the defence, prove nothing more than that they have never known the prisoners to have been engaged in robbery or dacoity, and that they have been accustomed to look upon them as respectable persons. •

"The confessions of all the prisoners, both before the darogah and before the magistrate, are consistent and well attested, and they account for the property found in the morning after the dacoity. I know no reason why they should be distrusted, on the contrary, I consider there are good grounds for discrediting the fact of their having been extorted. In the first place the verbal confessions of prisoners Nos. 3, 4 and 5, before the mohurir are confirmed by the circumstance, that on the strength of their information, and on that alone, the prisoners Nos. 6, 7, 8 and 9 were taken into custody, long before any communication could possibly have been made with the darogah. In the second place, the interval that elapsed between the time of their making the two confessions (with some three and with others two days,) was quite sufficient to have enabled them to recover from any ill-treatment they may have experienced in the Mofussil, and in the

third place, they all appear so utterly ignorant and uncivilized, that I do not believe it possible that they could have retained in their minds for a period of three or even of two days the facts of the case, had they not themselves taken a *pars magna* in the events which they described.

"Under these circumstances, I convict all the prisoners of the crime charged on their own confessions, and sentence them each to eight (8) years' imprisonment, with labor in irons."

Remarks by the Nizamut Adawlut.—(Present: Mr. A. J. M. Mills.)—"In their petition of appeal, the prisoners reiterate the plea urged in their defence, that their confessions were made under the influence of threats and fear, but it is without proof of any kind, while their confessions have been duly attested, and are corroborated by the circumstances of the case. I see no grounds for doubting the propriety of the conviction and reject the appeal."

PRESENT:.

SIR R. BARLOW, BART., Judge.

SOBUNDEE BURKUNDAUZ

versus

SHEIKH HASSAMDEE (No. 2), SHEIKH WARIS (No. 1) AND SHEIKH SHERIUTOOLLAH (No. 3.)

CRIME CHARGED.—Nos. 2, 1 and 3, 1st count, burglariously entering the house of Sobundee Burkundauz; 2nd count, being accomplice in the same; 3rd count, receiving and possessing property, knowing it to have been acquired in the aforesaid burglary.

CRIME ESTABLISHED.—Knowingly receiving and keeping property acquired by burglary.

Committing Officer, Mr. C. Mackay, principal sudder ameen, exercising powers of a magistrate.

Tried before Mr. C. T. Davidson, sessions judge of Dacca, on the 17th July 1852.

Remarks by the sessions judge.—"The prisoners are charged on the 1st count with burglary and theft of property valued at rupees 127-15-0; 2nd count, with being accomplices in the above crime, and 3rd count, with receiving stolen property, knowing it to have been acquired by theft. It appears that the prosecutor's house was broken into and robbed on the 31st of August last, and no clue to the offenders found until the 16th February, when the prosecutor again gave information and requested that the houses of the prisoners might be searched; search was made by the police, and property belonging to the prosecutor found in

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Case of
MUTHOOR
ROY BHOTAN
and others.

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Case of
SHEIKH HAS-
SAMDEE and
others.

The conviction of one prisoner sustained. Two prisoners released for insufficiency of evidence against them.

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Case of
SHAIKH HAS-
SANDER and
others.

their houses. Evidence to the recovery of the property from the houses of the prisoners and its recognition as that of the prosecutor, has been recorded. The prisoners in their defence claim the property as their own, but the witnesses called by them in support of that plea, have failed to establish it to the satisfaction of this court. It is shown, from the report of the foudjaree record-keeper, that the prisoner No. 2 has been before convicted of burglary, and other offences, and that both he and his son, the prisoner No. 3, are bad characters. The *futwa* of the law officer convicts the prisoners of having in their possession property acquired by burglary, and declares them liable to *tazeer*, and in concurrence therewith, they have been sentenced as described in column 12 of this statement."

Sentence passed by the lower court.—No. 2, five (5) years' imprisonment, with labor and irons; Nos. 1 and 3, three (3) years' imprisonment, with labor and irons.

Remarks by the Nizamut Adawlut.—(Present: Sir R. Barlow, Bart.)—"There is no proof of this case having been got up, as the prisoners allege, by Gendoo Meah, though it does appear that they are at enmity. The prisoner No. 1 has examined thirteen witnesses to prove that the articles Nos. 1 to 9, produced from his house, are his property.

"Two or three of the witnesses have spoken to a *nuth* said to have been worn by one Goluck, a woman in his keeping, but the remaining property none of the witnesses know anything about, indeed they have sworn that they cannot recognize it.

"The prisoner's conviction rests on his own defence, which is by no means established: he admits possession of the property sworn to by the witnesses for the prosecution, ornaments and clothes made by those witnesses, and distinctly recognized by them.

"I therefore, with the sessions judge and law officer, hold him guilty and confirm the sessions judge's sentence.

"A single cloth was produced from the house of prisoners Nos. 2 and 3, father and son, the recognition of it is not so clear and satisfactory as could be wished. A report was furnished, showing that the prisoners had once been confined before this case, however several persons have spoken of them as good characters: without relying on their evidence, I think it would not be safe to convict them on the evidence brought against them. They are acquitted and released."

PRESENT:

A. J. M. MILLS, Esq., *Officiating Judge.*

MUHABURPERSHAD AND GOVERNMENT

versus

SAMAH AHEER CHOWKEEDAR (No. 1), JUDDOBEER
AHEER (No. 2) AND MUSST. BUTCHIEEA (No. 3).

CRIME CHARGED.—1st count, burglary attended with theft of property, valued at rupees 185-2-6; 2nd count, knowingly receiving stolen property.

Committing Officer, Mr. J. Combe, joint magistrate of Shahabad.

Tried before Mr. W. Tayler, sessions judge of Shahabad, on the 22nd July 1852.

Remarks by the sessions judge.—“The facts of the case are as follow:

“The prosecutor’s house was broken into and robbed on the night of the 18th June.

“He was himself absent, but his servant, who had charge of the house and property, was roused by the noise at about midnight, and on waking, found that the robbery had been effected and the thieves gone. He called for the chowkeedars, but to no effect, and the next day, suspecting from their absence, as well as the bad character of prisoner No. 2, that they were concerned in the robbery, applied to the police for the search of the houses of the prisoners (the two chowkeedars), and the mistress of one of them.

“On the search being made, the articles of property from Nos. 1 to 7, were discovered. Articles Nos. 1 to 4, in the house of prisoner No. 1; article 5 in the house of prisoner No. 2; Nos. 6 and 7 in the house of No. 3.

“These articles of property are satisfactorily proved to belong to the prosecutor by the evidence of several respectable witnesses, and their discovery in the prisoners’ houses is fully proved.

“Prisoner No. 1 claims the articles found in his house, but gives no evidence in support of his plea.

“Prisoner No. 2 says, that somebody must have put article No. 5 into his house, he offers no evidence in his defence.

“Prisoner No. 3 makes the same plea, and declines examining the two witnesses, whom she had before named, on the ground of their having colluded with the prosecutor.

“The *futwa* acquits all the prisoners.

“The ground on which the law officer gives a verdict of acquittal, appears to be the absence of sufficient cause shown for the prosecutor’s suspicion against the prisoners, in consequence of which their houses were searched.

“He does not apparently discredit the fact, either of the search or the discovery of the property, nor impugn the testimony of the witnesses who identify it.

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Case of
SAMAH
AHEER
CHOWKEEDAR
and others.

The evidence against the prisoners being considered unsatisfactory, they were released, in dissent from the opinion of the sessions judge.

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Case of
SAMAH
AKHER
CHOWKEEDAR
and others.

"I cannot recognize this as a ground of acquittal. I believe myself that in very few cases is the clue in reality given by the proprietor of the stolen property, or the people of the plundered house, unless under special circumstances.

"The suspicion usually emanates from the police themselves, and for form's sake, or other motive put into the prosecutor's mouth.

"I therefore attribute very little importance to the point in which the moulvee's doubts have arisen.

"The prosecutor is a young man of great respectability, and swears with great confidence of deportment and manner to the articles, and the witnesses who identify them, are men who have been in the habit of seeing them for years.

"With regard to the prisoner No. 1, it is to be observed, that though claiming the things as his own, he has not offered any evidence whatever in support of the plea, or to refute the fact of their being found buried under ground in his house.

"Of the articles discovered in this man's house, one is a dish of a peculiar form and well susceptible of satisfactory recognition.

"The article found in the house of prisoner No. 2, is a pair of English cotton stockings, which the prosecutor and his friend and servant distinctly recognized. The only plea of the prisoner is that somebody threw it into the house.

"The two articles found in prisoner No. 3's house are also peculiar.

"Considering, therefore, the second count of the indictment satisfactorily established against the prisoner, I recommend that prisoners Nos. 1 and 2, being chowkeedars, be sentenced to ten (10) years' imprisonment, with labor in irons, and prisoner No. 3, to two (2) years', with labor suitable to her sex."

Remarks by the Nizamut Adawlut.—(Present: Mr. A. J. M. Mills.)—"I agree with the law officer. The articles found in the house of the prisoner No. 1, are such as might be found in any house, and are not capable of positive identification. The single article found in the house of prisoner No. 2, and the two articles found in the house of the prisoner No. 3, are claimed by the prosecutor, and are of a peculiar kind, but the prisoners allege they must have been put there surreptitiously, and I think there is reason to suspect, from the manner in which the search was made, something of the kind. The list of the stolen property was taken on the day the houses were searched, and is, therefore, no check on the proceedings of the police, while the grounds on which the prisoners were apprehended and their houses searched, are far from satisfactory. On the whole I think there is room for the suspicion entertained by the jury, that the charge has been got up against the prisoners by the prosecutor, who is their zemindar. Not satisfied therefore with the evidence against the prisoners, I direct their release."

PRESENT :

R. H. MYTTON, Esq., *Officiating Judge.*

GOVERNMENT ON THE PROSECUTION OF MOULVEE KURREEMDAD KHAN BAHADOOR, UNCOVENANTED DEPUTY COLLECTOR,

versus

SHEIKH JOOMUN.

CRIME CHARGED.—Assault on Moulvee Kurreemdad Khan Bahadoor, a judicial authority, at the time of his entering his cutcherry, on the 12th July 1852.

CRIME ESTABLISHED.—An assault on Moulvee Kurreemdad Khan Bahadoor, a judicial authority, at the time of his entering his cutcherry.

Committing Officer, Mr. W. B. Buckle, magistrate of Sylhet.

Tried before Mr. F. Skipwith, sessions judge of Sylhet, on the 11th August 1852.

Remarks by the sessions judge.—“The prosecutor, who is a deputy collector in this zillah, had just left his palanquin and had advanced a short way into his court, when the prisoner assaulted him, by throwing a shoe at him, which struck him on the shoulder.

“The prisoner ran away, and jumped into the river, but was immediately apprehended.

“He pleaded ‘guilty’ to the charge, and stated that he did not know the prosecutor, but that Rujjoo and others promised to give him rupees 5, if he would commit the assault, and he therefore did so.

“The prosecutor explained that he had purchased some mangoes of Rujjoo, and that they had proved bad ones, and that he had therefore abused him and had threatened to speak to the collector, to discharge him, he being a peadah in the Post Office, and hence the assault.

“The magistrate made the case over to the sessions, as he considered the prisoner deserving of more punishment than he was capable of awarding, and I am of opinion that in this he acted very properly. If a witness is to be considered under protection of the law when going and returning to court, a public officer must also be deemed so, and had the prisoner struck the deputy collector with the intention of doing him some bodily harm, I should have given him a severer punishment than I have done. The assault with the shoe was intended rather to disgrace him in the eyes of the natives than to inflict any personal injury.

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September 25.

Case of
SHEIKH JOOMUN.

Assault by throwing a shoe at a deputy collector in consequence of a private quarrel. Sentence of three years' imprisonment deemed much too severe, and prisoner having been in custody two and a half months, released.

1852.

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Case of
SHEIKH JOO-
MUN.

"The charge against Rujjoo of instigating the assault is, I observe, still pending before the magistrate.

Sentence by the lower court.—To be imprisoned without irons for three (3) years and to pay a fine of rupees thirty (30) on or before the 25th August 1852, or, in default of payment, to labor until the fine be paid or the term of his sentence expire.

Remarks by the Nizamut Adawlut.—(Present: Mr. R. H. Mytton.)—"From the prosecutor's statement it appears that he bought rupees four (4) worth of mangoes from Rujjoo, dāk hurkara, which turned out bad, and he threw them away. When Rujjoo came again to his house, he abused him, and told him to return the money, to which Rujjoo replied return my mangoes, and the prosecutor rejoined, take them out of the necessary, where I have thrown them; I will tell the collector that you bring mangoes up in the dāk boat, and get you removed. Rujjoo remarked, you 'll get us turned off, we 'll see to that, or some such expression, on which prosecutor got angry, and ordered him to be turned out neck and crop, and beat with shoes. He ran off. The prisoner says he was induced to throw a shoe at the prosecutor by the said Rujjoo.

"The case, then, is this, that in a private squabble about mangoes, the prosecutor ordered a person to be beat with shoes. He escaped, and induced another to retaliate by throwing a shoe at the prosecutor. It was an impudent act of mischief, but not a serious offence. The sentence passed is extravagantly out of proportion to the offence, and likely to have the effect of exciting sympathy for the offender, which is to be lamented.

"The prisoner has been in custody since the occurrence on the 12th July, and under sentence since 11th August. He has undergone punishment more than adequate to his offence, and will be released. The bail, rupees five hundred (500), demanded by the magistrate, was exorbitant."

PRESENT :

R. H. MYTTON, Esq., *Officiating Judge.*

KHETTROMONY DOOLEANEE AND GOVERNMENT

versus

SREEMOTEE SATHCOWRY DOOLEANEE.

CRIME CHARGED.—Wilful murder of the infant daughter of the prosecutrix. 1852.

Committing officer, Mr. C. T. Buckland, magistrate of Hooghly. September 25.

Tried before Mr. E. Bentall, additional sessions judge of Hooghly, on the 28th August 1852.

Case of
**SREEMOTEE
SATHCOWRY
DOOLEANEE.**

Remarks by the additional sessions judge.—“ The prisoner is married, but she is still a child and has several times ran back from her husband's house to her mother's. She may be twelve or thirteen years old. On the 16th of May, she went from her husband's village of Sunkungur to Satgong to sell fish, with two other women, who left her to take care of the child of one of them. They did not return until long after they were expected, so the girl thought she would go to her mother's, and she left Satgong. The mother of the child heard that such a person as the prisoner had been seen going on patting a child, who was crying, but she could not be traced until the next day, when it was found that she had gone to the house of a connexion, whom she used to call uncle, who lived at Ochaipulbaugh, which is four or five miles from Satgong, and had passed the night there, and left the house again in the morning, and the child was found in a tank more than as far as a voice could be heard from his house. After four days the prisoner was apprehended at the house of a relation. The medical officer is decidedly of opinion that the child was thrown into the water when she was alive, and that she died from drowning, and although the prisoner has repeatedly stated that she fell with the child, yet he found no marks of a blow on the child's body.

Wilful murder by drowning of an infant by a girl twelve or thirteen years old. In consideration of prisoner's tender age and the excessive weariness and despair to which she must, under the circumstances, have been reduced, sentence three years' imprisonment, with labor.

“ The child had no ornaments on it, and the parents did not wish to prosecute the prisoner. The only reason that can be given for the prisoner's having committed such a crime as murdering the child is, that she did not like the trouble of carrying it, or disliked taking it to the house of a relation. As the child was only one month old, she could not have got into the water alone, and she is shown to have been drowned, and although it is possible that the child was stunned by a fall of the prisoner when she had the child in her arms, and was then thrown into the water, yet the circumstances of her having kept the child's death

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a secret from her relations, and her having absconded, all tend to show that she did not meet with an accident, but intentionally got rid of the live child. I find her guilty of the murder, and considering her age, I would sentence her to imprisonment for life."

Remarks by the Nizamut Adawlut.—(Present: Mr. R. H. Mytton).—"The prisoner admits that she threw the child into the tank, but asserts that it was dead at the time. In her statement to the police, she attributes the child's death to her falling on it, in that to the magistrate, to exhaustion from crying, in consequence of want of food. Neither of these explanations of the cause of death can be true;—the first is contradicted by the *post mortem* examination by the surgeon; the time during which the child was absent from its mother was insufficient to produce death from the second. The conclusion is inevitable, that the prisoner threw the child into the water while alive, and no presumption, under the circumstances, can reduce the crime below the grade of wilful murder.

"The prisoner is only twelve or thirteen years old, but the sessions judge by whom she has been tried, suggests no doubt of her capacity to understand that what she did was a crime. Her concealing the circumstance and absconding, are proofs that she did so understand her act. I therefore concur with the sessions judge in convicting her of wilful murder.

"It is to be observed, however, that the prisoner is of very tender years; the father of the deceased has deposed that she is neither of a bad disposition nor temper, and neither he nor the mother desires her punishment. She was left by herself in charge of an infant, only one month old, at Satgong, a considerable distance from her home; evening was closing in, and the mother did not return; she wandered in search of her, patting the child, and endeavouring to soothe it, for a distance of two coss, according to Rakhal Dodhya, one of the witnesses. Night must then have closed in, and it may well be imagined how peevish and fretful the infant must then have become, and how weary the little girl who had charge of it, and had carried it such a distance, must have been. She had previously passed a river without attempting to destroy it by drowning, and her last fatal act must have been one of despair.

"Although, therefore, I hold the crime to be wilful murder, and the prisoner to be a responsible person, I think that this is peculiarly a case in which any but a very merciful sentence would be inappropriate.

"Three (3) years' imprisonment, with labor suited to her sex, is, in my opinion, sufficient. A warrant will issue accordingly."

PRESENT:

SIR R. BARLOW, BART., *Judge.*

MUNGUN AND GOVERNMENT

versus

RAMKISHUB.

CRIME CHARGED.—Wilful murder of Goluck, brother of Mungun.

Committing Officer, Mr. J. R. Muspratt, magistrate of Chittagong.

Tried before Mr. A. Forbes, officiating additional sessions judge of Chittagong, on the 28th July 1852.

Remarks by the officiating additional sessions judge.—“The law officer convicts the prisoner of manslaughter. I am unable to draw a distinction between the crime the prisoner has committed and wilful murder.

“The guilt of the prisoner is fully proved by his confessions to the darogah and to the magistrate; by the evidence of an eye-witness, and by the confession of the prisoner to witness No. 13, in the presence of witnesses Nos. 14 and 15.

“The deceased Goluck was fourteen years of age. He was the servant of witness No. 13. On Friday, the 23rd July, the deceased took out the cattle of witness No. 13 to graze near a tank near which the prisoner cultivates some rice land. The prisoner went on a raft through a nullah to look at his rice fields, and supposing that they had been injured by cattle, and seeing the deceased with his master's cattle near, he accused him of allowing his master's cattle to trespass on his field and abused him. The deceased returned the abuse; when the prisoner, jumping off his raft, struck the deceased a blow with the bamboo he used for propelling his raft. The bamboo is thirteen and a half feet long, and is of ordinary thickness and heaviness. The eye-witness deposes, that the prisoner held the bamboo at one end with both hands, and struck the deceased one blow in a slanting direction on the head with the full sweep of the bamboo. On receiving this blow, the deceased's head dropped on his chest, and he quickly fell, with his face downwards, into water two feet deep. The prisoner did not even then so far relent in his malignity as to pick the deceased out of the water and thus give him a chance of life; but he allowed him to remain in the water for a considerable space of time, long enough, according to the evidence of the eye-witness, to occasion death by drowning. The prisoner then took deceased out of the water, but threw him into it again, and went away on his raft. The vakeel of the pri-

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The deceased died after being struck by the prisoner on the head with a bamboo, but whether from the effects of the blow, or from immersion in water into which he fell, was uncertain.

The prisoner was convicted of culpable homicide.

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soner asked this eye-witness what he supposed the prisoner's motive was in taking the deceased out of the water. The witness replied, to see whether deceased was dead or not.

"This eye-witness is rather diminutive in stature, and young-looking; but he has sworn that he is sixteen years of age. He appeared ordinarily intelligent, and I have no reason to suspect the truth of his evidence. He is the servant of the prisoner residing in his house, being fed as one of the family. He was fishing at the time, and was not in attendance on the prisoner. He further deposes, that the prisoner, on Friday night, made him swear not to divulge what had happened.

"Witness No. 13 deposes to his cattle returning without his servant, the deceased, on Friday; and to the prisoner's telling him, when witness was looking for the deceased, that the deceased had gone to his own house, in consequence of the prisoner having abused him. He further deposes, that the prisoner came to his house during the night of Friday, and after sitting for a short time, the prisoner stated that he had committed a fault, and had killed the deceased. He mentioned what he was willing to give to the boy's family, and asked witness No. 13 to arrange the matter. This conversation was heard by witnesses Nos. 14 and 15, the wife and daughter of witness No. 13.

"Witness No. 16 was staying in the house of the prisoner; and she deposed to hearing the prisoner tell his mother that he had killed the deceased by striking him one blow with a bamboo.

"The prisoner, on Saturday morning, pointed out the body of the deceased, in the place where he had killed him, to witness No. 13, in the presence of witnesses Nos. 17 and 18.

"Information was given to the thanna on the 24th July; and the police darogah recorded the confession of the prisoner on the 25th July; and the magistrate again recorded his confession on the 26th July.

"It does not appear at what place, or at what time, or by whom the prisoner was apprehended.

"The body arrived in such a state of decomposition that the civil assistant surgeon could give no opinion regarding the cause of death. He was only able to ascertain that the scalp and skull were uninjured.

"Though the prisoner denied the offence before this court, I have no doubt, from the evidence, that the prisoner did kill the deceased by striking him a dangerous blow, which, if it did not of itself prove mortal, stunned the deceased, and occasioned him to fall into water, in which the prisoner allowed the deceased to remain until the deceased was deprived of life by drowning.

"The deceased gave the prisoner no provocation whatever. Neither the eye-witness, nor the prisoner in his confession, allege

that the cattle the deceased was tending, were trespassing on the prisoner's fields; and the prisoner admits that he first abused the boy. If, then, verbal abuse were admitted as provocation, under any circumstances, the prisoner would not be in a position to plead it in extenuation of his crime. Without the slightest provocation, out of sheer malignity, to strike a sensible creature so as temporarily to deprive him of sensation, and to let him fall into water and remain there to drown, appears to me to be nothing short of wilful murder. But as the crime was not committed with the intention of furthering or concealing any other crime, but appears to have been perpetrated from an unfeeling and malignant indifference to human life, the ends of justice will be satisfied, in my opinion, without carrying into force the extreme penalty of the law."

Remarks by the Nizamut Adawlut.—(Present: Sir R. Barlow, Bart.)—"The prisoner and the deceased, a boy of twelve or fourteen years old, had some words, and abuse passed between them; the prisoner charged him with allowing his cattle to destroy some crops. The *only* eye-witness says *the deceased abused the prisoner*, on which he struck deceased with a bamboo he had used for propelling his raft. Deceased fell immediately and did not survive the blow. By the deposition of the assistant surgeon it appears, that he could find no trace of injury on examination of the scalp and skull. But the boy *did* not survive, whether from the effect of the blow or from immersion in water, alledged to be eighteen inches, or two feet deep, is not clearly shown. The boy, the eye-witness says in the foudjdarce, on being struck on the land where he was standing, fell into the water. The offence was committed on the impulse of the moment; the bamboo was in the prisoner's hand at the time, and he struck the blow under the excitement of angry feelings: he confessed his crime in the mofussil and before the magistrate, though he denied in the sessions court. I convict the prisoner of culpable homicide, and sentence him to seven (7) years' imprisonment with irons and labor."

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Case of
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PRESENT :

R. H. MYTTON, Esq., *Officiating Judge.*

MUSST. UBZUN AND GOVERNMENT

*versus*USGHUR, *alias* UFZUL.

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Case of
Usghur *alias*
Ufzul,

Wilful murder, capital sentence not passed on account of slight suspicion of insanity.

CRIME CHARGED.—Wilful murder of Mehuroollah.

Committing Officer, Mr. W. M. Beaufort, magistrate of Backergunge.

Tried before Mr. A. S. Annand, officiating sessions judge of Backergunge, on the 6th September 1852.

Remarks by the officiating sessions judge.—“Musst. Ubzun, the wife of the deceased, states, that her husband had some land at Fooljooree, in the Sunderbunds, where he had resided from Bysakh last, leaving her at Rampore, in thanna Meerzagunge. That on a Monday, in Jeyt last, he came to her at night and asked her to return with him to Fooljooree, which she declined doing just then, as her child was sick. After a short time he said, that he would return to the house of Buddeerooddeen, in Katultolee, whence he had come last, and where he had stopped on his way from Fooljooree to Rampore, and went away. He came at night and went away again so quickly, because he was in debt at Rampore, and did not wish to be seen there. On Tuesday, deponent heard from Abbas, burkundaüz, that her husband had been murdered in Buddeerooddeen's house, at Katultolee, by the prisoner Usghur. She proceeded at once to the house of Buddeerooddeen, with the burkundaüz and Babur Ullah, her husband's elder brother, and there saw the body of her late husband. There was a wound upon the right side of the throat, about four inches long, and Usghur said, that having got an opportunity he had killed Mehuroollah, because he had a criminal connexion with his, Usghur's wife, who was a niece of the deceased.

“The prisoner Usghur confessed that he had murdered Mehuroollah, at the thanna and before the magistrate; the substance of his statements are as follow: That he killed Mehuroollah, because he had had a criminal intimacy with his wife, Musst. Souzee, by cutting his throat with a *dáo*; that he and his wife live at Fooljooree, near the deceased, and that the intimacy had taken place there; that he had come to the house of Buddeerooddeen, his half brother, to see him, on the day that the deceased went to fetch his wife from Rampore, and deceased returning to the house of Buddeerooddeen, when six *ghurries* of the night remained, laid down in the verandah, upon the very bed upon which the prisoner was, and went to sleep, when he took up a *dáo* without a handle that was in the verandah, and cut his throat with

it as he lay on the bed ; that he died immediately, and the noise awoke the women in the house, who came out, and seeing what was done, took him to Mahomed Was, a *matbur* of the place, who took him to the thauna, whence he was sent into the magistrate as usual ; that no other person was present or knew anything about the deed but himself. He adds that one day in Bysakh last, he had seen the deceased and his wife committing adultery, and from that date he had wished to kill him. In my court, the prisoner denies having killed Mehuroollah, and tells an incoherent story of Mahomed Was being the murderer, because he had an intimacy with Musst. Dhurye, the sister-in-law of Buddeerooddeen, for which prisoner had blamed him, and that intending to kill him, he had come at night for that purpose, and had by mistake killed Mehuroollah instead, who was sleeping in his place.

“The witnesses Nos. 1 and 2, the wife of Buddeerooddeen and his brother's wife, who were the only people, save children, in the house on the night of the occurrence, corroborate the above. Hearing a noise in the verandah towards morning, one of them called out to Usghur to know what it was, when he replied Mehuroollah has been killed ; they then came out and found that such was the case, and Usghur told them at once that he had done the deed, because Mehuroollah was intimate with his wife, when the two women took the prisoner to the house of Mahomed Was Mirdah, the uncle of Buddeerooddeen, who took him to the thauna. Several other witnesses corroborate what they state. The evidence of the civil assistant surgeon shows, that he examined the body of Mehuroollah, and that there was a large wound on the right side of his neck, which, in all probability, caused death, but that the body was in a high state of decomposition when he examined it ; and that upon opening the abdomen, he could come to no satisfactory conclusion, whether the *viscera* had been diseased or not, and that the wound was probably inflicted with an instrument like the *dāo* shown him in court. It appears, that shortly after the prisoner was sent in for trial, he pretended to be insane, when the assistant surgeon examined him and has deposed, that he considers him of perfectly sound mind, and can find no traces of insanity in him. There is no proof of any intimacy between the deceased and the wife of the prisoner. The witnesses have never heard of it, but the relationship between them would be an additional reason for their being as secret as possible in their communications with each other. The prisoner appears to have mentioned his suspicions to no one, but it must, I think, be believed from his statement, as it is the only cause assignable for the deed, which has been clearly proved from his own confessions before the magistrate, and from the evidence of those who were sleeping in the house at the time the deceased was killed in the verandah, who saw the body

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whilst it was yet warm, and heard from the lips of the prisoner the acknowledgement that he was the murderer.

“The jury returned a verdict of wilful murder against Usghur, in which I concur. I have no doubt that the deceased had been intimate with the wife of the prisoner, and that when he found such an opportunity of revenging himself, as was presented by his going to sleep upon the very bed upon which the prisoner was lying, the latter gladly availed himself of it. A broken *addo* was lying ready to his hand in the verandah, with which the children had been cutting mangoes in the day time; he took it up and killed Mehuroollah whilst he slept. But there was in this case no deep-laid scheme of murder, no previous preparation for the deed: the opportunity of ridding himself of a man that he had good reason to hate suddenly offered to him, and he could not resist taking advantage of it. Under all the circumstances of the case, I think, that imprisonment for life will be sufficient punishment.”

Remarks by the Nizamut Adawlut.—(Present: Mr. R. H. Mytton).—“There is nothing on the record of this trial to justify the opinion expressed by the sessions judge in his 5th paragraph, that the deceased had been intimate (meaning, I suppose, criminally intimate,) with the wife of the prisoner. But the absence of any other motive, and his repeated statements that this was the cause of the murder, raises a strong presumption that some such suspicion was rankling in his mind at the moment. There is no reason to believe that the suspicion was well founded: the behaviour of the prisoner was not that of a man having a real enmity against the deceased. It is in evidence that they both ate out of the same dish on the evening before the murder; his relations have deposed to the police, that at times previous to the murder, the prisoner was silent and sullen, and some slight but not positive indications of insanity have appeared since his apprehension. These circumstances, although not sufficient to exonerate the prisoner as a responsible person, are such as to render a capital sentence inappropriate. In concurrence with the recommendation of the sessions judge, the prisoner is sentenced to imprisonment for life in the jail at Allipore.”

PRESENT :

R. H. MYTTON, Esq., *Officiating Judge.*

GOVERNMENT.

SHEIKH MURAD HALSANA.

CRIME CHARGED.—Wilful murder of Olanee Bebee.

Committing Officer, Mr. A. Pigou, magistrate of East Burdwan.

Tried before Mr. J. H. Patton, sessions judge of East Burdwan, on the 17th September 1852.

Remarks by the sessions judge.—“The prisoner is charged with the wilful murder of Olanee Bebee, his daughter, aged 22 years. The deceased was insane and mischievously disposed in her madness and with the view of restraining her and preventing her from doing harm to herself and others, the prisoner bound her with a cord, and kept her in that condition for two days, during which, whether from the tightness of the ligature or the struggles of the deceased to free herself, such injuries were inflicted on her arms as caused ulcerous sores, which terminated fatally after the lapse of twenty days.

“The prisoner pleads ‘not guilty.’

“The only direct evidence of the fact that the deceased had been bound, is the testimony of Sheikh Zamindar, who saw her in that condition for a moment when he went to get some fire from the prisoner’s house. He represents her as being seated on the ground at the time, in a state of absolute nudity, with the rope loosely confining her arms above the wrists.

“Another witness, Pearce Dominee, who deposed to the above fact before the magistrate, states at the trial, that the deceased told her from within that her hands were bound, but that she did not see her in that state. Little reliance can be placed in this evidence, as it is inconsistent and contradictory from that given before the lower court.

“Two witnesses, Nuwabdee Sheikh and Sheikh Nufur, depose generally to the reputation of the deceased having been of unsound mind. They also speak to the rumour of her father, the prisoner, having tied her up, but repudiate many of the statements apparent in their deposition taken before the magistrate, and consequently in a great measure qualify the testimony.

“Two persons attest and prove the *sooruthal* made by the police, but I regard this record rather as a report of the injuries apparent on the person of the deceased during lifetime, than the result of an inquest after death.

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Case of
SHEIKH MU-
RAD HALSANA.

Prisoner charged with homicide of an insane daughter by binding her, which binding resulted in ulcers, acquitted of that charge; it appearing that death was not occasioned by the ulcers resulting from the bandages alone, but he was convicted of an aggravated assault, and sentenced to six months’ imprisonment

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SHIRIKU MU-
RAD HALBANA.

"The most material evidence against the prisoner, save his own admissions, is the testimony of the civil surgeon, who pronounces that death resulted from the sores and ulcers exhibited on the body at the *post mortem* examination, and that those injuries may have been the effect of tight bandaging. The court will perceive that Mr. Hastings is of opinion, that the ulcer on the right knee of the deceased, a result independent altogether of the alleged binding as a cause, might alone, in course of time, have caused death, in the absence of proper diet and medical treatment, but that the crisis was unquestionably precipitated by the other injuries sustained by the deceased.

"The remaining witnesses for the prosecution prove and attest the prisoner's confessions both before the police and the magistrate. These records are for the most part consistent in tenor, and disclose the fact, that the prisoner bound the deceased to keep her out of mischief, to which she was prone, from a weak and disordered intellect, and detained her in that state for two days, harmless and innocent of the most remote intent to do him child bodily injury. There is one discordance, however, between the two records, which, had they stood alone, as the criminative evidence against the prisoner, might have affected their force and efficacy. I mean the statement made in his Mofussil confession that the sores on the arms of the deceased were the effect of tight ligature on his part, and his denial of that assertion in his admission before the magistrate and declaration there, that he did not perceive the injuries in question until the deceased had returned home after an absence of four days, he knew not whither, having fled from the house the moment she had been unbound.

"Before this court, the prisoner denies having tied up the deceased, declaring that he only kept her under strict surveillance to prevent her doing injury to the neighbours, whom she attacked violently at times and bit. He cites the witnesses named to his defence, in proof of the plea that he was not in the habit of ill-using the deceased, and that she returned after an absence of three or four days from home, bearing the injuries from the effects of which she died.

"Four persons were examined for the defence, but their evidence amounts to nothing, being confined to the general belief entertained that the deceased was of unsound mind.

"The *futwa* of the law officer acquits the prisoner for want of proof of the wilful murder of his daughter, Olanee Bebee, and declares him entitled to his release. On being required to state whether or not he considered the prisoner guilty of the minor offence of manslaughter, he returned a similar verdict.

"I dissent with the finding. The prisoner's confessions, which are above all suspicion of having been unfairly or improperly obtained, of having bound the deceased with a rope and kept her

in that state of restraint for two days, backed by the testimony of the witness Sheikh Zamindar, who saw her in that plight, and supported by the evidence of the civil surgeon, who declares it to be his opinion that death ensued from injuries inflicted as by ligature, leave no doubt on my mind as to the prisoner's criminality. That he intended to inflict the grievous hurt and damage to the deceased, exhibited on her person, I do not believe, but the act of keeping her in duress, bound with cords, for two whole days, was inhuman, and evinced an absence of natural affection and a recklessness and indifference to human suffering highly reprehensible. I would therefore 'convict the prisoner of homicide, induced by a felonious assault, but unpremeditated, and sentence him to two (2) years' imprisonment without labor and irons, subject to the approval and orders of the court."

Remarks by the Nizamut Adawlut.—(Present: Mr. R. H. Mytton).—"The prisoner is charged with causing the death of his daughter by binding her arms, which treatment produced ulcers, of which she died.

"In the eighth paragraph of the session judge's report on this case, he states, 'that the assistant surgeon is of opinion, that the 'ulcer on the knee of the deceased, a result altogether independent of the alleged binding as a cause, might alone, in course of time, have caused death, in the absence of proper diet and medical treatment, but that the crisis was unquestionably precipitated by the other injuries sustained by the deceased.'

"There is no portion of the assistant surgeon's deposition to the effect of the sentence underlined. This is what the assistant surgeon has deposed :—

" 'I found a large old sore on the inside of the right arm on the elbow joint, and a similar one on the left arm also near the joint. There were numerous sores on the back, caused probably by the woman having lain upon a hard surface for some time, most likely without clothes. I also found an old ulcer penetrating the right knee joint. The injuries on the arm may very possibly have been the effect of tight bandaging. The ulcer on the knee was of a totally different character, and resulted, I am of opinion, from a broken-down constitution.

" 'I have no doubt but that the drain occasioned by the above sores on the constitution, together with an absence of proper diet and medical treatment, brought about death in a gradual way. The ulcer on the knee, which is a very important joint, might have of itself occasioned death in process of time, and I am of opinion that it existed long before the sores on the arms. I don't think the sores on the back were occasioned by ligatures.'

"From this it appears that there were several sores on the back and one on the knee besides those the causing of which is established against the prisoner, that death was not occasioned or

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precipitated by one or two particular sores. Under these circumstances the charge of homicide cannot be sustained. The prisoner, however, is convicted of an aggravated assault, and sentenced to six (6) months' imprisonment and rupees twenty-five (25) fine, commutable on non-payment, to labor."

PRESENT:

SIR R. BARLOW, BART., *Judge.*

GOVERNMENT AND MANU SINGH

versus

KUSTEE (No. 9), DHUMKUR (No. 10) AND MUHUNG-
GOO (No. 11).

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September 29.
Case of
KUSTEE and
others.

CRIME CHARGED.—Dacoity with torture and plunder of property valued at rupees 124-12-0.

Committing Officer, Captain W. H. Oakes, principal assistant agent to the Governor General, Lohardugga.

Tried before Major J. Hannington, deputy commissioner of Hazareebaugh, on the 30th August 1852.

Remarks by the deputy commissioner.—“The prosecutor states that one Sunday night in Cheyt last, he was a sleep in his house, and his servant Tullooram Pande also sleeping in the verandah outside, when at about 10 p. m., a gang of dacoits came, lighted their torches and removing the screen from the door, entered the house. Prosecutor awoke and got up, but was instantly knocked down by a blow on the head with a bludgeon. They said ‘show us your money, or we will take your life.’ Prosecutor then showed them where an earthen pot, containing rupees 90, was buried under the bed. This they took, with various other property. Prosecutor was besides wounded on the arm, and was forcibly thrown down, so that his hip-joint was dislocated. There were about thirty men armed with clubs, and with cloth round their heads. Prosecutor did not recognise any of them. The prisoner Muhungoo owed prosecutor twenty-five rupees, the prisoner Kustee, ten rupees cash and fourteen rupees as surety, and for interest two and a half rupees, and the prisoner Dhumkur, eighteen rupees; Muhungoo and Kustee had come to prosecutor's house on Friday, and got from him some parched rice to eat. Therefore the prosecutor suspected them and named them to the darogah.

“The prisoners plead ‘not guilty.’

“No. 1, witness Tullooram, was sleeping in the prosecutor's verandah when the prosecutor's house was attacked by a gang of dacoits, who assaulted him, whereon he woke up, and was then beaten by four men, who failing to knock him down,

attempted to bind him, but he escaped from them and ran off to the neighbouring village of Loorgooma, where he raised an alarm. On his return the dacoits were gone, and prosecutor was lying in the court-yard insensible, and the house had been robbed.

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Case of
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|---------|-----------------------|---|
| " No. 2 | Witness Lall Khan, .. | } —Prove the apprehen- |
| " 3 | " Truthoobun Lall, .. | |
| " No. 4 | Witness Leelumbar, .. | } —These prove the
<i>sooruthal</i> , and that the
injuries inflicted on
the prosecutor were
severe. The witness
No. 8, who is a native
doctor, deposes that
the prosecutor's life |
| " 7 | " Muhly, .. | |
| " 8 | " Roun, .. | |
| " 9 | " Boodhoo, .. | |
| " 11 | " Busram Sahee, .. | |
| " 12 | " Ghassy, .. | |
| " 13 | " Bhukoo, .. | |
| " 14 | " Sookur, .. | |

was in imminent danger, and that from the dislocation of the hip-joint, which could not be reduced, the prosecutor is permanently crippled.

- | | | |
|----------|--------------------|---|
| " No. 15 | Witness Nurkoo, .. | } —Prove the confessions
of the prisoner before
the police officer. |
| " 16 | " Meighoo, .. | |
| " 17 | " Gureeb, .. | |

- | | | |
|----------|-----------------------------|--|
| " No. 19 | Witness Ahmud Alee Khan, .. | } —Prove the confes-
sions of the prison-
ers before the prin- |
| " 20 | " Sheikh Sherbun, .. | |
| " 21 | " Sheikh Boodhoo, .. | |

cipal assistant.

"The first confessions of the prisoners Kustee and Dhumkur are to the effect, that they, being invited by one Bundhoo and others, committed the dacoity in the house of the prosecutor. Their second confessions are substantially to the same effect.

"The first confession of the prisoner Muhungoo is, that he was invited by the prisoners Kustee and Dhumkur and others, whom they have named, to join in committing the dacoity on the prosecutor's house, but that he did not. His second confession is explicit, that he went with the gang to the prosecutor's house, but stood outside with his fellow prisoners. No. 22, witness Domah, heard the alarm of the dacoity and went to the prosecutor's house, where he found that prosecutor had been ill-treated. Witness did not see any of the dacoits.

"The prisoner Kustee, in his defence, states, that he did not commit the robbery. His confession before the police officer was extorted by Lall Khan, burkundauz, (witness No. 2), who beat him severely, and the said Lall Khan, on the way to the assistant, told prisoner that if he confessed, he should be acquitted.

"The defence of the prisoners Dhumkur and Muhungoo is of similar purport.

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others.

"Some witnesses for the defence speak to the previous good character of the prisoners.*

"The jury, whose names are entered below,† find the prisoners guilty.

"Notwithstanding the confessions of the prisoners, no part of the plundered property has been recovered. Besides the confessions, there is no direct evidence against the prisoners. But it will be observed, that the ground of the prosecutor's suspicion was, that the prisoners were his debtors. This fact is admitted in the first confessions of Dhumkur and Muhungoo. In the second confession of Dhumkur, he says, that his father-in-law, Ghassy, owed money to the prosecutor, and the motive assigned for the dacoity by the prisoners is, that the prosecutor *was severe in exacting payment*, either from themselves or their relative. It is by no means unlikely that such a motive would induce ignorant and violent persons to rob the prosecutor and certainly the special personal violence done to the prosecutor indicates that the perpetrators were actuated by personal malice. On the other hand, that the prosecutor would institute a false prosecution by the success of which he loses all chance of recovering the money (by his account rupees seventy-nine and half) owing to him by the prisoners is not probable. I find then, that there is a probable reason why the prisoners should commit the offence with which they are charged. I find that they confess having committed it, and I find no reason for a malicious or got-up prosecution, so I conclude with the jury, that the prisoners are guilty, and looking on the offence as aggravated by the extreme violence used towards the prosecutor, I must recommend, that the prisoners be sentenced to imprisonment for life, with hard labor, in irons, in transportation beyond sea."

Remarks by the Nizamut Adawlut.—(Present : Sir R. Barlow, Bart.)—"I quite concur in the deputy commissioner's remarks in the latter paragraphs of his reference, and confirm the sentence he proposes."

* See Muhungoo's confession that he had been once taken up for cattle-stealing, I have ascertained that he was acquitted, being proved innocent of the offence.

† Lalla Gujraj Singh, *mookhtar*.
Lalla Emrit Lall, ditto.
Rum Kanae Raa, ditto.

PRESENT:

R. H. MYTTON, Esq., *Officiating Judge.*

GOVERNMENT

versus

SREENATH DUTT, ALIAS CHEEROO KAIST (No. 3), JADOO MALLA (No. 4), SETH CARAPIET ARRATOON (No. 5), SHEPKH BAOLLA (No. 6), SOOKMOY BAGDEE (No. 7), SREEMONTO DOME (No. 8), BISHONATH, ALIAS BEESOO PATNEE (No. 9), HURDIAL CHOWBY (No. 10), SURJOO ZURGUR (No. 11) AND KALEE AUSTAMOLEE (No. 12).

CRIME CHARGED.—1st count, Nos. 3 to 12, committing a dacoity attended with wounding on the river Sola Dana, on the boat of Kebal Kisto Poddar, and plundering therefrom property to the amount of about rupees 500; 2nd count, Nos. 3, 5, 8 and 9, receiving a portion of the property plundered in the above dacoity, knowing that it was acquired by dacoity; 3rd count, Nos. 3 and 4, under Regulation LIII. of 1803, Section IV. Clause 2, with being the leaders of the gang by which the above dacoity, attended with wounding, was committed; 4th count, Nos. 3 and 4 with having belonged to a gang of dacoits of which they were the sirdars.

Committing Officer, Mr. S. Wauchope, commissioner for the Suppression of Dacoity.

Tried before Mr. E. Bentall, additional sessions judge of Hooghly, on the 4th September 1852.

Remarks by the additional sessions judge.—“It appears by the record that a petition was presented by one Kebal Kisto Poddar, on the 20th of May 1852, to the deputy magistrate of Moonsheegunge in Dacca, stating that he had been robbed on the 21st of April in the Soonderbunds by dacoits, one of whom was like an Englishman. But before this the prisoner Arratoon had, on the 8th of May, while he was a prisoner at Allipore for another offence, brought the case to the notice of the magistrate of the 24-Pergunnahs and acknowledged that he had himself, with others, committed the dacoity.

“There was no witness in court who was present when the dacoity took place except two rowers of one of the two boats which was used by the dacoits to commit the dacoity in, but there is no doubt about the crime having taken place, for their depositions are supported with a variety of evidence, circumstances and confessions, as well as the proved dying declaration of the man who was in charge of the property which was plundered.

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Case of
SREENATH
DUTT, *alias*
CHEEROO
KAIST and
others.

Crime, hav-
ing belonged
to a gang of
dacoits. Sen-
tence, impris-
onment for
life.

Ditto, da-
coity. Sen-
tence, six-
teen years’
imprisonment,
in banishment.

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DUTT, *alias*
CHERROO
KAIST and
others.

" Three boats left Calcutta, in one of which was the family of the prisoner Arratoon. They went on together as far as Takee, whence Arratoon left his boat and his family, and proceeded in one of the other boats in pursuit of a pansway which they had previously noted as worth plundering; they overtook it the next night and plundered it of all the valuables which were in it and went off from the place and then separated, and Arratoon returned to his family at Takee, the next morning, in a fourth boat, which he had engaged in the neighbourhood, and which he took on, together with that in which his family was, to Allipore, where he was afterwards apprehended on another account.

" Two of the boatmen of one of the boats with which the dacoity was committed, *viz.*, witnesses Nos. 1 and 2, depose that all the prisoners were engaged in the crime, and two men, witnesses Nos. 18 and 19, who were left behind in the boat occupied by the family of Arratoon, depose that all the prisoners went together from the neighbourhood of Calcutta to Takee, and thence started together, and that prisoners Nos. 5 and 10 returned together in another boat with a variety of articles of property which they had not got before. A variety of property was recovered, but as the persons who could recognise it reside at Dacca, and were not in attendance, the evidence that it was found in the possession of the prisoners could not be of any use in determining the case.

" The prisoner Sreenath pleads ' guilty ' to every charge, and acknowledges that he made a detailed confession before the commissioner of having committed a great variety of dacoities, and of having been a leader of dacoits. I find him guilty on all the charges, except such parts of Nos. 1 and 3 as are contained in the words ' attended with wounding,' for there was no witness who could speak on the trial to that point, and the dying declaration of the man who was in charge of the boat did not show the nature and extent of his injuries. The same guilt is proved against the prisoner Jadoo Malla (No. 4,) who confessed at great length before the commissioner, and clearly showed that he was a much-practised river dacoit, having committed river dacoities in all the districts round Calcutta, and even in the river Pudda. He acknowledged that he had belonged to two gangs of dacoits. On his trial he withdrew his confession, and wished to prove an *alibi* at the time that the dacoity took place, and one witness, a Calcutta prostitute, said he did not leave Calcutta for a month. I propose that both these prisoners be sentenced to transportation for life.

" The prisoner Seth Carapiet Arratoon pleaded ' guilty ' to both charges, and had previously made a confession before the commissioner for the suppression of dacoity. It appears that he had once set up in business as a watch-maker, under the name of S.

Cumberland, and that he had two badges for servants, which were engraved S. Cumberland, watch-maker, &c. &c. &c., one of these was found in his father's house, and the other on the person of Surjoo, the prisoner No. 11, and the two badges were worn by Hurdial Chowby and Surjoo Zurgur at the dacoity, and the whole case corroborates his plea and I find him guilty.

"There is a warrant filed in court to the keeper of Her Majesty's House of Correction at Calcutta, by which it appears that the prisoner Arratoon was sentenced, on the 8th of May last, to two years' imprisonment, with hard labor in irons, by the magistrate of the 24-Pergunnahs, for theft between the 29th of March and the 5th of April last, and although the prisoner has been tried by different authorities in different zillahs, yet the principle of Regulation XV. of 1814, Section II. Clauses 1 and 2 would apply to this case. The discipline of the house of correction in Calcutta is generally supposed to be much more severe than in Mcfussil jails, and I believe it is unusual to sentence prisoners to imprisonment in the House of Correction for very long periods and as there are no jails out of Calcutta which are suited to the imprisonment of persons with European habits, and this prisoner has been mistaken for an Englishman, I consider it my duty to propose, under Regulation VI. of 1831, Section XII. and Act XXXI. of 1841, Section VI. that he be transported for twelve (12) years, and two (2) years instead of corporal punishment, being the full period of imprisonment that I could impose after deducting the two years to which he has already been sentenced; the sentence of transportation to commence after the expiration of the punishment to which he has already been sentenced.

"I would most willingly say anything that I could in favor of the prisoner, but although he has confessed his guilt, and has given every information in his power by which the other dacoits have been apprehended, yet it was only on the day that the sentence of imprisonment was passed on him by the magistrate of Calcutta, that he came forward, and he might have hoped by so doing, for a pardon of both crimes, on condition that he gave evidence which would convict the gang with which he had gone forth, yet it does not appear that at that time any hopes were given to him, and although he states that he had hopes from the power of the commissioner for the suppression of dacoity, yet it does not appear that any promise was made to him."

"The prisoner Baolla confessed before the commissioner that he was engaged in the dacoity, but he pleaded 'not guilty.' He was the mungee of the boat to which the witnesses Nos. 1 and 2 belonged. There is no direct evidence against him of having committed more than this dacoity, but he had once been a burkundauz, and it is a remarkable circumstance, that he, being a Mussulman, should have had for his crew a Bagdee and a Teor,

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being Hindoos of different castes, and it tells against the character of the men, it being well-known that dacoits when on an expedition do not regard ceremonies with regard to persons of lower caste, which neglect would at other times injure their caste.

"The prisoners Nos. 7, 8 and 9, Sookmoy Bagdee, Sreemonto Dome and Bishonath, *alias* Beesoo Patnee, were the boatmen of one of the boats which was used to commit the dacoity in: they are of caste that do not eat together, and they were out several days together in the Soonderbunds. They all confessed their guilt before the commissioner, but pleaded 'not guilty' before me. I feel no doubt about their having started with a full knowledge of the plan of dacoity.

"The witnesses Nos. 1, 2, 18 and 19 said that the prisoners No. 10, Hurdial Chowby, and No. 11, Surjoo Zurgur passed as servants of Arratoon; that they had his badges on; that No. 10 was his jemadar, and No. 11 his chuprassee. Hurdial is said to have hired the boat of which Baolla was the manjee, and he doubtless did give Baolla and his crew notice when to go. Surjoo had on one of the badges when he was apprehended. The two men were apprehended at the same time at the house of one Durga Raur. Although there are many things which support the evidence of the witnesses, who say that these prisoners were among the dacoits, yet there is nothing in their favor except that when Hurdial was apprehended, he said that he had fever, and he would have it to be supposed that he had it at the time of the dacoity.

"The prisoners No. 12, Kalee Austamolee, and Cheeroo and Jadoo Malla have been known to the Calcutta Police as dacoits for two years, and they passed on the occasion of this dacoity as Baboos. There is less evidence against Kalee Austamolee than against the other prisoners, but the evidence of the four witnesses, Nos. 1, 2, 18 and 19, supported as it is by the confessions of so many persons before the commissioner, is sufficient for his conviction.

"The offence is very heinous, inasmuch as the boat which was robbed had been observed by the gang in the neighbourhood of Calcutta, and had been followed for several days by the dacoits among whom were noted sirdars, and the circumstances of the case show that the prisoners had confidence in each other and in the success of their undertaking. I have consequently sentenced them to the most severe punishment in my power, *viz.*, sixteen (16) years' imprisonment, with labor in irons, and refer the case of prisoners Nos. 3, 4 and 5 for the court's orders."

Remarks by the Nizamut Adawlut.—(Present: Mr. R. H. Mytton).—"Of the prisoners concerned in this case, Nos. 3 and 4 have alone been charged with having belonged to a gang of dacoits. They are convicted on their own confessions, and other proof of this and the other charges. They are recommended to

be imprisoned for life in transportation. I fully concur in the propriety of this sentence.

"The case of the prisoner Arratoon is also referred under laws quoted by the sessions judge authorizing this step when the sentence he is competent to pass is inadequate to the guilt of the accused. The sessions judge recommends that he be transported for fourteen (14) years. This court is not authorized to transport except for life. The aggravating circumstance (wounding) charged is not proved: the other prisoners have been sentenced to sixteen (16) years' imprisonment, and therefore, concurring in the conviction by the sessions judge, it appears to me proper that this prisoner should be sentenced to the same period of imprisonment. Execution of this sentence will commence on expiration of that the prisoner is now undergoing, and the local authorities can, with reference to Section VIII. Act XXIII. of 1810, cause this sentence also to be executed in the House of Correction."

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Case of
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DUTT, *alias*
CHEEROO
KAIST and
others.

PRESENT :

R. II. MYTTON, Esq., *Officiating Judge.*

RAMCHAND SEPAHEE

versus

PULLUCKDHAREE SINGH.

CRIME CHARGED.—Adultery, and taking away and keeping in his house prosecutor's wife.

CRIME ESTABLISHED.—Adultery.

Committing Officer, Lieutenant G. N. Cave, assistant political agent.

Tried before Lieutenant Colonel F. G. Lister, political agent, Cossiah Hills, on the 12th August 1852.

Remarks by the political agent.—"This case was tried with the aid of a *punchayt*.

"Prosecutor charged the prisoner with committing adultery with his wife, Prem Sooba, and called witnesses to prove the commission of this crime, and the fact of his having been married to Prem Sooba.

"One witness deposed to having seen Prem Sooba and prisoner in bed on the night of 7th May last, in prosecutor's house. Another witness deposed to having seen prisoner and Prem Sooba sleeping arm in arm in an empty house, on the night of the 11th May last. Another witness deposed to seeing prisoner and Prem Sooba together in the prosecutor's house, and the woman on seeing the witness leaving it in an unusual manner.

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Case of
PULLUCKDHAREE SINGH.

Seduction of, and adultery with, a sepoy's wife by a non-commissioned officer.

Sentence of three years' imprisonment confirmed in appeal, special reasons for severity being given.

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Case of
PULLUCKDHAR-
REE SINGH.

"Several witnesses deposed to seeing prosecutor's wife living in prisoner's quarters after she had quitted home.

"Four witnesses deposed to prosecutor having been married to Prem Sooba, according to the rights of their religion.

"The prisoner pleaded 'not guilty,' and called witnesses to prove that Prem Sooba was not married to prosecutor, and that he, the prisoner, was on duty on the 11th May last. The first part was not established, the second was, but it was shown at the same time that the prisoner being on duty did not prevent his being absent from his post at certain periods of the day to take his meals.

"The *punchayt* found the prisoner guilty; agreeing with their verdict, sentence passed accordingly."

Sentence passed by the lower court.—Three (3) years' imprisonment, without labor and irons.

Remarks by the Nizamut Adawlut.—(Present: Mr. R. H. Mytton).—"This is a prosecution by a Goorkha sepoy of the Sylhet Light Infantry against an up-country havildar of the same corps, for the seduction of his wife and adultery with her.

"The political agent has sentenced the accused to three (3) years' imprisonment. From this sentence he appeals, and Gunga Govind Roy has appeared on his part as *mookhtar* to conduct the appeal. He urges:—*First*, that the marriage of the prosecutor with the woman Prem Sooba is not proved; *secondly*, that the woman deposes that she has had no criminal intercourse with the accused, and that as she denies, the accused ought not to be punished; *thirdly*, that on the day on which the alleged act of adultery took place, the accused was on rear guard, which is established by the regiment books, thereby proving an *alibi*; *fourthly*, that the act of adultery is not satisfactorily proved.

"I find the marriage of the prosecutor with Prem Sooba, when she was a young girl, is proved by Duljyoon, soobahdar, and several other men of the regiment. She has ever since lived with prosecutor as his wife and has had three children.

"The second objection is futile. It is not to be expected that the accomplice in guilt would give evidence to criminate herself. The fact stated in the third objection is admitted on the trial to be true, but it is also stated in the proceedings on trial, that the accused might probably clandestinely leave the rear guard.

"The evidence of the witnesses who assert that on the 11th May they witnessed the criminal intercourse of the accused with prosecutor's wife, is certainly not satisfactory, but it is established that when the prosecutor was absent at Sylhet, his wife absented herself from his house and took up her residence at that of the accused, near to which the prosecutor seized her. Independent therefore of the direct evidence to the fact, there is strong presumptive proof.

"Adultery is undoubtedly an offence by the Mahomedan law and punishable by Section VI. Regulation XVII. 1817, by imprisonment for seven (7) years, but the cases of this description, which have come before the courts are rare. Only one is reported in the Nizamut Adawlut Reports, volume II. page 317.

"In that the offender was sentenced to imprisonment for one (1) year.

"Unquestionably the seduction of a wife is a severe injury to the husband; but considering the rare instances of punishment following the offence, I should probably not have passed so severe a sentence against the prisoner, had the trial originally come before me. There is, however, nothing illegal in it, the offender is a non-commissioned officer, and the aggrieved a common soldier of the Goorkha caste. The political agent states that the Goorkhas are very tenacious in matters when the honor of their wives is concerned, and that serious consequences might ensue if redress was not given when a crime of the above nature has been clearly substantiated. I therefore do not deem it proper to interfere with the sentence."

PRESENT :

R. H. MYTTON, Esq., *Officiating Judge.*

GOVERNMENT

versus

AMJAD ALEE (No. 9), KADIR MANJEE (No. 10, APPELLANT) AND RAJCHUNDER SINGH (No. 11, APPELLANT).

CRIME CHARGED.—No. 9, 1st count, with perjury, in having, on the 30th August 1851, deposed, under a solemn declaration taken instead of an oath, before the moonsiff of Bhutteearree, that his name was Sudder Alee, and that his father's name was Potan, such deposition being false and having been intentionally and deliberately made on a point material to the issue of the case; 2nd count, perjury, in having deposed, on the 30th August 1851, under a solemn declaration taken instead of an oath, before the moonsiff of Bhutteearree, in a case in which Kadir Manjee was prosecutor and Fezaram, prisoner; that Fezaram, prisoner, in last Aughun gave a bond to Kadir Manjee for rupees 163-3-0, on account of 88 maunds, 24 seers, 14 chittacks of mustard seed and 28 parcels of tobacco, such deposition being false, and having been intentionally and deliberately made on a point material to the issue of the case; 3rd count, perjury, in having, on the 30th August 1851, deposed, under a solemn declaration taken instead of an oath, before the moonsiff of Bhutteearree, that he was a witness to the above

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Case of
KADIR MAN-
JEE (appel-
lant) and
others.

Perjury and
subornation of
perjury.

Sentence of
five years' im-
prisonment
confirmed.

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KADIR MAN-
JEE (appel-
lant) and
others.

bond, such deposition being false and having been intentionally and deliberately made on a point material to the issue of the case. No. 10, 1st count, with subornation of perjury, in having, on 30th August 1851, caused, instigated and procured prisoner No. 9 to depose before the moonsiff of Bhuttearee, under a solemn declaration taken instead of an oath, that prisoner No. 9 was a person named Sudder Ale, and that he was a witness to the bond given by Fezaram Dhopee to him, prisoner No. 9, the same being false and having been deliberately and intentionally made on a point material to the issue of the case. No. 11, 1st count, with subornation of perjury, in having, on the 30th August 1851, caused, instigated and procured prisoner No. 9 to depose before the moonsiff of Bhuttearee, under a solemn declaration taken instead of an oath, that prisoner No. 9 was a person named Sudder Ale, and that he was a witness to the bond given by Fezaram Dhopee to prisoner No. 10, the same being false, and having been deliberately and intentionally made on a point material to the issue of the case.

CRIME ESTABLISHED.—No. 9, perjury, and Nos. 10 and 11, subornation of perjury.

Committing Officer Mr. J. R. Muspratt, magistrate of Chittagong.

Tried before Mr. A. Forbes, officiating additional sessions judge of Chittagong, on the 28th August 1852.

Remarks by the officiating additional sessions judge.—“ Prisoner No. 10 sued on a bond attested by a witness named Sudder Ale, son of Potan. Prisoner No. 9, when examined as a witness, swore that his name was Sudder Ale and that his father's name was Patan; and that he attested the bond on which the suit was brought. Prisoner No. 10 was sitting close to prisoner No. 9, whilst the deposition of prisoner No. 9 was recorded. Prisoner No. 11 admits that he was the agent of prisoner No. 10, and was in the moonsiff's court when the deposition of prisoner No. 9 was recorded, and it is proved that he took an active part in the management of the suit, and in presenting prisoner No. 9 to the vakeel as the attesting witness. The defence of prisoner No. 9, is that when he was examined as a witness he gave his proper name of Amjad Ale; that he cannot read and write, and was unaware that the mohurir wrote a false name, and that he authorized the writer of the bond to sign his name on it, as an attesting witness, by touching the pen, and therefore concluded that he was an attesting witness to the bond. Prisoner No. 10 endeavoured to lay the blame on prisoner No. 11. Prisoner No. 11 denies that his employment under prisoner No. 10 extended to the management of suits in the civil court. The offences are fully established against the prisoners by the evidence of the writer of the deposition and of the vakeels of the prosecutor

and the prisoner in the suit, as well as by the evidence of other witnesses."

Sentence passed by lower court.—Prisoners Nos. 9, 10 and 11, to be imprisoned for five (5) years' each, with labor and irons.

Remarks by the Nizamut Adawlut.—(Present : Mr. R. H. Mytton).—"Prisoner Kadir Manjee appeals, alleging that he was not present when the deposition was taken, and throwing the blame on Rajchunder. Rajchunder also appeals; he admits being Kadir's servant, and states, that he went to the moonsiff's court to give intelligence to a vakeel, and had nothing to do with the suit, the witnesses in which were produced by Kadir himself. These pleas are futile: the sessions judge shows that there is ample proof of the charges against both prisoners. Their appeal is therefore rejected."

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Case of
KADIR MAN-
JEE (appel-
lant) and
others.

PRESENT:

W. B. JACKSON, Esq., Judge.

MUSST. BULYEE

versus

KURAMUT KHAN (No. 8) AND SHEIKH AUCLOO
(No. 9).

CRIME CHARGED.—1st count, theft of property valued at Company's rupees 211-14-0; 2nd count, having in their possession stolen property, knowing the same to have been stolen.

1852.

Committing Officer, Mr. R. J. Richardson, officiating magistrate of Sarun.

September 30.

Tried before Mr. C. Garstin, sessions judge of Sarun, on the 31st August 1852.

Case of
KURAMUT
KHAN and
others.

Remarks by the sessions judge.—"I refer this case, because I dissent with the *fatwa* of the law officer, who convicts the prisoners, whereas I do not think that a conviction can safely be had against either of them.

Property
found in the
drain belong-
ing to prison-
ers' house
held not to be
evidence of
their guilt, as
there was no-
thing to pre-
vent the ac-
cess of others
to the drain.

"The following is a brief statement of the main facts of the case:—The prosecutrix and the prisoners all reside upon the same premises, but their rooms are separated by a small courtyard, in which there is a 'mooree', or water-course. On the night of the 23rd ultimo, a box, containing sundry valuables, the property of the prosecutrix, was found to have been opened and its contents taken away; and information being directly given to the police (it being at once evident that no entry had been made from the outside), measures were taken to prevent any one leaving the place, and the next morning search was made inside for the missing articles.

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KURAMUT
KHAN and
others,

"Search was first of all made in the rooms occupied and rented by the prisoners, but nothing was found in them, but a *matranee* being sent for to search the privy and drain, it is said that before she searched the latter, a women named Edun (a relation of the prisoner Kuramut, who lives also on the premises,) told the darogah to search it and when this was done the whole of the missing articles were found hidden in it, tied up in a bit of cloth.

"Suspicious at once arose against the prisoners, from the fact of their living in the house, and it being evident that the theft could have been committed only by some one who was within, and this was strengthened as regards the prisoner Kuramut, (who is a *burkundauz*,) from his having neglected to go out and summons some parties, whom he had received orders to bring in a case pending before the magistrate, but beyond this (excepting that the drain runs in front of the rooms they occupy) there is nothing like proof against either of them. They have from the first denied their guilt, and both do so on their trial, and as it is clear that there were other parties resident in the house (the darogah himself admits that eight persons slept in the house on the night of the robbery), I do not see how a conviction can be had against either of them.

"Suspicious no doubt exist against them, and on these grounds the Moulvee convicts both, but as it is quite impossible to say whether both were really engaged in the theft, and if *not both*, who is and who is not the guilty party, (and the theft may possibly have been committed by some one of the women, who also were in the house,) I do not see how either of them can be convicted. I would therefore acquit them, and with reference to all the facts of the case, have ordered both prisoners to be released on bail, pending the issue of this reference to your court."

Remarks by the Nizamut Adawlut.—(Present: Mr. W. B. Jackson.)—"The law officer convicts the prisoners of having in their possession stolen property; now the property was found in a drain, not in the prisoners' possession; and although it is asserted by witnesses that no one but the prisoners had access to this drain, this does not appear to be the case from the map of the house with the proceedings; on the contrary, the drain runs across the corner of the open court-yard, which is common to the two buildings, and the servants of the prosecutrix might therefore easily have gained access to it. I acquit the prisoners and direct their release."

PRESENT:

R. H. MYTTON, Esq., *Officiating Judge.*

GOVERNMENT

versus

CHUNDRA DOME (No. 1) AND HURLOL MISTREE
BAGDEE (No. 2).

CRIME CHARGED.—Having committed a dacoity, attended with wounding, on the river Sola Dana, on the boat of Keбал Kisto Poddar, and plundering therefrom property to the amount of about rupees 500; 2nd count, No. 1 is charged with having belonged to a gang of dacoits.

Committing Officer, Mr. S. Wauchope, commissioner for the Suppression of Dacoity.

Tried before Mr. E. Bentall, additional sessions judge of Hooghly, on the 25th September 1852.

Remarks by the additional sessions judge.—“On the 4th instant I tried ten prisoners for the same crime with which these two men are charged and found them all guilty, and referred the case of three of them to the Court of Nizamut Adawlut, and before the record could be got ready for transmission, I was informed that these prisoners were apprehended and had confessed their guilt and would certainly be committed for trial; it appeared, therefore, advisable that the two cases should be forwarded together, particularly as the original record would be required by me on the second trial.”

“Before I proceed to relate the evidence which has been brought against these prisoners, I will mention a doubtful point of law which arose during the trial. It is this. One of the witnesses, Sreenath Dutt, has been tried by me and found guilty, having pleaded guilty on trial of having committed the very dacoity for which these prisoners are now tried, but as he was also found guilty of having belonged to a gang of dacoits, I was not able to pass sentence on him, and I referred the record to your court, so that although he is convicted, his case is not disposed of. If his evidence may be received, it is no doubt of considerable value, but I do not think that it can be said to be clearly admissible under Act XIX. of 1837. I received it, however, because I do not find that I am anywhere forbidden to do so. I need not recapitulate the particulars of the dacoity, but must add to what I before stated, that two men who were in the boat which was plundered attended this trial and each showed marks of three wounds which he received in the dacoity, and according to the evidence of the civil surgeon they were all sword-cuts and all inflicted about four or five months ago.

1852.

September 30.

Case of
CHUNDRA
DOME and
another.

Crime, having belonged to a gang of dacoits. Sentence, transportation for life.

The evidence of a prisoner convicted, and under reference to the Nizamut Adawlut, may be received against prisoners under trial on a subsequent commitment for the same offence.

1852.

September 30.

Case of
CHUNDRA
DOME and
another.

"The evidence against the prisoners is that of their own confessions before the commissioner for the Suppression of Dacoity, on the 13th of September, on which day, according to the calendar, they were apprehended, but there is no evidence to show on what day they were apprehended, although the record shows that it was in Calcutta by a duffadar of the commissioner. Also, there is the evidence of the two men Onoop Bagdee and Sreemonto Teor, who recognise the prisoners, and who accompanied them to the scene of the dacoity and were in company with them for four days, but in a different boat. This evidence is supported by the deposition on oath of the confessing prisoner Sreenath Dutt, and by the prisoners having been named before their apprehension in the confession of Jadoo Malla, Sreenath Dutt, Sreemonto Dome, Bishonath Patnee and Sookomoy Bagdee, who all went to the dacoity in the same boat with the prisoners, and by Jadoo Malla having described Hurlol Mistree (prisoner No. 2) as having the mark of a burn on his right breast and arm, which mark I observed on the trial on his person.

"The evidence respecting the second charge against the prisoner Chundra Dome is proved by his confession before the commissioner, and it is supported by documents which I called for and which show that besides the dacoity in the Soonderbunds, two other dacoities, to which he confessed, did occur, viz., one at Goralgatchee, in the thanna of Rajapore in Howrah, and the other in Koreal, in the thanna of Singhole in Hooghly. I should have convicted the prisoners even if I had not received the evidence of Sreenath Dutt. I have sentenced Hurlol Mistree Bajdee to sixteen (16) years' imprisonment, and I propose that Chundra Dome be sentenced to transportation for life."

Remarks by the Nizamut Adawlut.—(Present: Mr. R. H. Mytton).—"I concur in the conviction of the prisoners of both charges and in the sentence proposed.

"There is no legal impediment to the reception of the evidence of Sreenath Dutt. If not convicted, his evidence would have been good without Act XIX. of 1837, and under that law it is good after conviction."

SUMMARY CASE.

PRESENT :

J. R. COLVIN, Esq., *Judge.*

MRS. J. H. POTTER, PETITIONER.

1852.

THIS was an appeal from an order of the sessions judge of 24-Pergunnahs, dated the 18th September 1852, who had rejected the petitioner's appeal against the order of the deputy magistrate of the above district, in a case in which a claim for maintenance was preferred under Regulation VII. of 1819, because the petition of appeal was presented after the prescribed period.

Remarks by the Nizamut Adawlut.—(Present: Mr. J. R. Colvin.)—"In calculating the period of Nizamut appeals, the time during which stamped paper remains in the lower court for the purpose of procuring a copy of its decision is not deducted. The terms of Act XXXI. of 1841 are restrictive and imperative. A Nizamut appeal can be presented without copy of the decision of the lower court."

Appeal rejected.

September 14.

Case of
MRS. J. H.
POTTER.

In calculating the period of Nizamut appeals, the time during which stamped paper remains in the lower court for the purpose of procuring a copy of its decision, is not deducted.

A Nizamut appeal can be presented without copy of the decision of the lower court.

PRESENT :

W. B. JACKSON, Esq., Judge.

A. J. M. MILLS, }
AND } Esqrs., Officiating Judges.
R. H. MYTTON, }

PUTTOO OURUT

versus

DHONIE SIRDAR.

CRIME CHARGED.—Rape.

Committing Officer, Mr. J. C. Dodgson, officiating magistrate of Rajshahye. 1852.

Tried before Mr. H. Stainforth, officiating commissioner of the 14th or Moorshedabad Division, on the 27th August 1852. October 1.

Remarks by the officiating commissioner.—“ The statement of the prosecutrix is, that as she was spinning thread, the prisoner came, threw her down and committed rape on her person. Case of DHONIE SIRDAR.

“ The prisoner, who has denied guilt throughout, pleaded *alibi*, and referred me to his petition, in which he alleges, that the case is made up by one Gobind Ghosal, whom, and whose witnesses, he declares to be at enmity with him. Acquittal on a charge of rape. Two judges of the Nizamut Adawlut discrediting the evidence.

“ Three witnesses, who gave their evidence in a very free and unembarrassed manner, and without any material inconsistency, have sworn that, hearing the woman crying, they went and saw the prisoner committing the rape, the door of the house being half open.

“ The *alibi* is not established by the witnesses called by the prisoner.

“ The *mooftee* finds the prisoner guilty; but I dissent from his *futwa*.

“ The record of one of the cases sent with the record of this trial, shows enmity with Gobind Ghosal; but connexion of that person with the present case is not proved. Omar, however, one of the eye-witnesses, is shown by the record of another case also sent to have been punished, as a receiver of stolen property, at the instance of the prisoner's father, and the manner in which he and Ameer gave their depositions, indicated strong malevolence against the prisoner, while the third witness is the brother of the prosecutrix's maternal grand-father. The evidence then on which the charge rests, is open to suspicion; and adverting to the character of the women of the lower orders in this country, the probability to me is, that the prisoner, a good-looking young man, was detected in adultery with prosecutrix, and that it has been converted by his enemies, with consent of prosecutrix's relations, into a case of rape.

1852.

October 1.

Case of
DHONIN SIR-
DAR.

"I am of opinion that the prisoner should be released.

"There is no map showing the position of prosecutrix's and the witnesses' houses. The prosecutrix, too, should have been a witness, and her husband prosecutor; and the word forcibly should have been omitted in the English version of the crime charged against the prisoner."

Remarks by the Nizamut Adawlut.—(Present: Messrs. Jackson, Mills and Mytton.)—MR. W. B. JACKSON.—"The prosecutrix states, that she was spinning one afternoon, when the prisoner suddenly attacked her and threw her down, and had carnal connexion with her against her will: she cried out and three persons came, who swear they saw the prisoner in the act, and spoke to him, but they were afraid to seize him: when he perceived them he got up and ran away; the prisoner is represented to be a disreputable violent character, and the prosecutrix, as, on the contrary, a respectable woman: the sessions judge does not question the fact, but adverting to the character of the lower class of women in Bengal, he thinks, that as the prisoner is a good-looking man, it is more probable the act took place with the woman's consent; he also mentions a cause of enmity between the witnesses and the prisoner; now if the fact be admitted, there is no reason to doubt that the woman cried out for help, and that the act was not done with her consent. I agree with the law officer in convicting the prisoner of rape, and would sentence him to five (5) years' imprisonment, with hard labor."

MR. R. H. MYTTON.—"I concur with the commissioner, with powers of sessions judge, that the evidence in this case is suspicious. Three witnesses, who were not together at the time, state that, hearing a cry, they went and found the prisoner in the act of raping the prosecutrix. All of them state that he was holding her mouth with one hand and had another hand on her breast. The evidence of one is almost word for word the same as that of the others. It is not probable that three persons coming from different spots would arrive at the same moment, view the occurrence in exactly the same aspect, and use the same expressions to the offender; moreover, by the prosecutrix's account to the police officer, the sexual intercourse was completed by emission before she could get her mouth free to cry out. If this were the case, the witnesses attracted by that cry, would not have seen the prisoner in the act as they state. Their explanation of their not seizing him is futile. If he were in the act, and his hands employed as they state, there was no reason to be afraid of his stick, which was against the wall. They were three to one.

"I observe that the prisoner's father has lately married the mother of the prosecutrix. The parties stand to each other in the relation of step-brother and sister. This is an additional ground of improbability. I would acquit the prisoner."

MR. A. J. M. MILLS.—“ After an attentive consideration of the evidence, I am of opinion, that too much doubt hangs over it to warrant a conviction of the prisoner. The officiating commissioner, who seems to have paid particular attention to the demeanor of the witnesses, which is a valuable guide in deciding on their credibility, disbelieves their testimony, and I would, in a case of this kind, give the greatest weight to his opinion. The probabilities too, advertg especially to the relationship between the parties, are against the truth of the charge; it is more likely that the act, if done at all, was done with, than against, the consent of the prosecutrix, the prisoner's relation. I acquit the prisoner, and direct his release.”

1852.

October 1.

Case of
DHONIE SIR-
DAR.

PRESENT:

W. B. JACKSON, Esq., Judge.

GOVERNMENT

versus

CHUNDRA MOHUN CHOWDRY, ACTING NAZIR OF
ABKARRY OFFICE.

CRIME CHARGED.—1st count, embezzlement of rupees 200-9-4, from public money in his charge, as acting nazir of the Abkarry Office of Dinagepore; and 2nd count, theft of rupees 200-9-4, of public money.

1852.

October 1.

Case of
CHUNDRA
MOHUN
CHOWDRY.

CRIME ESTABLISHED.—Theft of rupees 200-9-4 of public money.

Committing Officer, Mr. E. S. Pearson, magistrate of Dinagepore.

Tried before Mr. J. Grant, sessions judge of Dinagepore, on the 23rd June 1852.

Prisoner convicted of theft, under Section IV. Act XIII. of 1850, for taking away money from a chest, which he had no authority to remove.

Remarks by the sessions judge, —“ The prisoner was charged with embezzlement and theft. The latter count was added under instructions issued by me with reference to Circular No. 15, of the 12th December 1851. The prisoner was acting nazir of the Abkarry Superintendent, and had charge of the money chest, one key of which remained with the nazir, the other with the superintendent. On the 28th of April, about 10½ A. M., the box was shut, and the padlocks put on by the prisoner. About 11 o'clock it was discovered that the padlocks were not properly fastened, when the superintendent sent his key by the chuprassy, who made it over to the prisoner to set the lock to rights, and then took it back to his master about 4 P. M. It was again discovered by the burkundauz on guard that the lock was not properly fastened, when the superintendent went and found his padlock placed under the hasp, while the prisoner's

The plea that prisoner had been relieved of the charge of the money, rejected as not proved.

1852.

October 1.

Case of
CHUNDRA
MOHUN
CHOWDRY.

was surely fastened. The superintendent then directed the prisoner to open the box, which he did, and immediately said that there was a deficiency of rupees 200. The prisoner on closing the chest in the morning had reported that the cash was correct. There were then five bags, and in the evening there were only four, each having a label of the contents attached in the hand-writing of the prisoner. The deficiency is clearly proved, and the substance of the prisoner's defence is, that he was absent from the 13th to the 23rd; that he returned on the 24th, but did not get his key from the man who had it during his absence until the 27th, when he took charge of the chest without counting the cash, as the accounts were not brought up; that the chest, in which opium as well as cash was kept, had been opened during his absence, and the said chest was at all times in charge of the guard. It is proved that the chest was opened only on one occasion during his absence to put money into it; and that the prisoner then sent his key by his own man, who took it back to him immediately, and that small sums remained with the guard, instead of being put into the chest, in consequence of his absence. It is also proved that a man was appointed to act for him during his absence solely in the writing department, and that his key was not in charge of a mohurir in the office, as he asserts. The labels of the money bags are in his hand-writing; and there are also two statements, showing the deficiency with his signature. I am satisfied that the money was stolen by the prisoner, possibly before, but probably on, the 28th April. Leaving the superintendent's padlock open in the first instance, might have been to enable him to extract the money, and after that was discovered, he may have locked it on the staple, but under the hasp, to cause confusion and throw suspicion on the guard, as he first pleaded before the superintendent that he could not be held responsible for what was in charge of the guard. The *futwa* of the law officer convicted the prisoner of theft, in which I concurred."

Sentence passed by the lower court.—Three (3) years' imprisonment, with labor in irons, and to pay, under Act XVI. of 1850, a fine of rupees 200. The proceeds of the fine that may be enforced by distress to be paid to, or for the benefit of, the Abkarry Superintendent of Dinagepore, who has suffered by his wrong, or any surety, from whom money has been recovered by the superintendent.

Remarks by the Nizamut Adawlut.—(Present: Mr. W. B. Jackson.)—"Mr. Norris, for the prisoner, argued—There could be no embezzlement in this case such as to bring it under Act XIII. of 1850, because there was no rendering of false accounts, nor proof of misapplication of the money. On this plea, I observed that the prisoner is not convicted of embezzlement, but of theft;

the money in question belonged to prisoner's master, and if he took it away as he had no authority to take it away, he took it fraudulently, and his case comes under Section IV. Act XIII. of 1850, as felonious stealing under that Act.

"Mr. Norris then urged that there was no proof that the prisoner took the money, relying on a Bengallee account of the 27th April, showing that the money then in the box was the same as on the 28th, when the deficit was discovered: the deficit, he argued, must, therefore, have existed on the 27th; further, that prisoner had been absent on leave from the 13th to the 27th, and another person had acted for him during that time; it was by no means impossible that the money was then taken. On this plea, I remark that it is not proved by evidence that the prisoner was during his sickness ever relieved of his charge, or that another was appointed in his stead; on the contrary, it appears that he retained the key throughout, but even by his counsel's admission, he took charge on the 27th, and did not then notice any deficit; the Bengallee paper showing the amount in the box on the 27th, is written by prisoner himself, but it is not shown that this was filed on the 27th; on the contrary there is every reason to believe otherwise; on the 28th, when the prisoner opened the box, in the presence of the superintendent, the prisoner remarked instantly, without counting or reflection, there is a bag of rupees (200) wanting, as if he had that instant discovered it: it was not as if the deficit had been discovered on reference to accounts; moreover, if the balance was, as he says, rupees 654 on the 27th, if the balance was the same on the 28th, there was no deficit at all; why then should he remark the deficit on the 28th. The prisoner had charge of the money on the 27th, even by his own admission, and there was then no deficit noticed by him: the abstraction must have been therefore made afterwards; and as he had the key in his own possession, no one else could have gained access to the money, which was in a box in the office treasury under a guard; as no one else could have taken it, I conceive it proved that the prisoner took it, and approve of the conviction."

1852.

October 1.

Case of
CHUNDRA
MOHUN
CHOWDRY.

PRESENT :

SIR R. BARLOW, BART., *Judge.*

GOVERNMENT

versus

HULKHOREE ROY.

1852.

October 1.

Case of
HULKHOREE
Roy.

The prisoner was accused of throwing a woman and her son into a well, by which the latter was drowned. The evidence not establishing that he threw the boy in, he was convicted of attempting to cause the death of the mother, and was sentenced to transportation for life.

CRIME CHARGED.—1st count, wilful murder of Ramdainee, a boy, son of Musst. Nunkee; 2nd count, attempt at wilful murder of the above Musst. Nunkee; and 3rd count, theft of ornaments from the person of the above Musst. Nunkee, valued at rupees 24-10-0.

Committing Officer, Mr. A. A. Swinton, magistrate of Shahabad.

Tried before Mr. W. Tayler, sessions judge of Shahabad, on the 24th July 1852.

Remarks by the sessions judge.—“The case is a remarkable one, being a cold-blooded and deliberate attempt to murder a woman and her child. The providential and unexpected escape of the mother has led to the conviction of the murderer.

“When the case was first brought before me, the woman was made prosecutrix; but, as her evidence was of the utmost importance to the prosecution, I directed the magistrate to make the Government prosecutor, and the woman a witness.

“The facts established by the testimony of this woman, and corroborated by the circumstantial evidence in the case, are, that in the month of January last, Musst. Nunkee left her husband's house in anger (caused by a quarrel about a nose-ring), carrying off with her sundry personal ornaments of gold and silver, and accompanied by her child, a boy of four years' old, and after first visiting her uncle at the village Dhobaha, where she gave her jewels into the care of a dyer's wife, but afterwards received them back from her, she was on her way to Arrah, where she met the prisoner, who is a resident of the above village.

“At this point of the woman's statement, there is some inconsistency, arising evidently from a desire to conceal the real circumstances of her connexion with the prisoner, the illicit and intimate nature of which she herself admitted before the magistrate: this will be adverted to hereafter.

“Her statement before the court is, that prior to the accidental meeting, she had not known the prisoner; that he accosted her and snatched her jewels out of her hand; and she then, in the hopes of getting them back, followed him to Arrah.

“This is clearly untrue, and is opposed to her statement before the magistrate, where she admitted having previously had illicit intercourse with the prisoner, and her subsequent conduct evidently shows that she accompanied him of her own free-will.

"This contradiction is easily accounted for by the influence of the family and husband, who is a witness in the case, and who would be naturally anxious to save the character of his house. It is not calculated to throw the slightest discredit on any other portion of the story. On arriving at Arrah, the pair went first to a lodging house, where they hired a room and stayed some time. In the evening of the same day, they adjourned to the house of a woman of the town, and the following day, leaving Arrah, they went to Muhabeergunge, where the prisoner took her to two shops and purchased *suttoo* and sweetmeat.

"This was late in the evening of the 17th January 1852. They then went on to Odwunt Nugger, where they arrived after night-fall. This village is about five miles from Arrah, and two miles from Muhabeerpore.

"The progress and proceedings of the party from the time they reached Arrah, is spoken to by the various people at whose houses they rested, and the woman's statement (with the one exception noted above) is clear and consistent, and fully borne out by the testimony of these witnesses."

"From the time they reached Odwunt Nugger, her own testimony is the only evidence.

"Her statement is, that on reaching a grove at this place, the prisoner said he had missed the road, and then added there is a *bruhm* (ghost) here, and unless we make obeisance to it, it will throw us down. Immediately after this, before the woman could perform the act of obeisance suggested, the prisoner seized her, and, binding a cloth over her arms, lifted and dragged her to a large well that was a few paces off, and threw her down: she fell and sunk into the water, but it was not out of her depth and she succeeded in getting hold of the iron chain that was suspended in the well, where she remained throughout the night up to her waist in water.

"In the morning her cries attracted a passer by, and a number of the villagers assembled round the well, a man descended and brought her out exhausted and benumbed (it was in the month of January), and on searching the bottom of the well for the woman's clothes, the child was found under the water, dead.

"Directly the woman was taken out, she at once, before all the people assembled, charged the prisoner with the deed. This is the woman's story, narrated with every appearance of truth in her manner and deportment, and as it is, under all the concomitant circumstances, fully corroborated, I have no hesitation in giving full credence to the tale.

"The woman did not know that her child was in the well, and accounts for it (reasonably enough) by supposing that he was thrown in immediately after herself, and while she was bewildered by the terror and force of her fall. The actual murder of the

1852.

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Case of
HULKHOREE
Roy.

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Case of
HULKHOREE
Roy.

child, is therefore not directly established by her testimony as an eye-witness ; but its proof rests upon circumstantial evidence of the strongest and most conclusive kind.

"The well was large, and about thirty-five feet deep, surrounded by a raised wall of several feet. With regard to the inconsistency in the woman's statement noted above, and the improbability of her accompanying the prisoner peaceably after he had robbed her of her jewels, I would observe, that there is little doubt that she had a *liaison* with the prisoner, and that in the character of her paramour, he obtained possession of her jewels, the retention of which was the motive of this horrid murder. As before observed, this is the only point in which the statement is at variance with her former narration.

"Every other part is corroborated.

"The husband deposes to the quarrel, and to her having left his house with her jewels ; another witness saw her give her jewels to the dyer's wife at the village of Dhobaha, and received them back again from her ; her progress to Arrah in company with the prisoner ; her lodging there at two separate houses ; their presence in the evening at Muhabeerpore, which is in the direct road from Arrah to Odwunt Nugger ; the discovery of the woman and child in the well, and her immediate and unhesitating charge against the prisoner, directly she was taken out ; all these circumstances, combined with the clear and consistent statement of the woman (on all save the single point of her connexion with him), appear to me to leave no doubt whatever of the prisoner's guilt.

"The medical evidence proves that the death of the child was caused by drowning.

"The defence is an absolute denial of all the circumstances, and the plea that he does not know and has never seen the woman.

"This defence, the utter falsity of which is undeniably established by overwhelming evidence, is further proof against him.

"He is shown also to have been absent from his home several days before, and absconded immediately after the occurrence. He was arrested by an omedwar, six months afterwards, at a *serai* in Ghazee-pore.

"The *futwa* convicted the prisoner of the first and second counts of the indictment, *viz.*, the wilful murder of the child, Ramdainee, and of the attempt to murder the woman Nunkee, and acquits him of the third. I fully concur in the finding, and regarding the crime as one of peculiar and unusual atrocity, I consider it my painful duty to recommend that the prisoner be sentenced to death."

Remarks by the Nizamut Adawlut.—(Present : Sir R. Barlow, Bart.)—"The prisoner is charged—*first*, with the murder of

Ramdaine, a boy of four or five years of age ; *secondly*, with the attempt to murder the boy's mother Nunkee ; and *thirdly*, with theft of ornaments from her person.

" The only witness, Musst. Nunkee, who was at first prosecutrix and whose evidence bears immediately on the prisoner, was herself attacked by him, and, as she deposes, was thrown by the prisoner into a well, described to be thirty feet deep, with a wall one foot high, where she remained the whole night, and was taken out in the morning, by parties who heard her cries.

" She has sworn that the prisoner took her into a garden at Odwunt Nugger, bound her eyes, seized her in his arms and threw her down the well. She told this story on the spot before those who had assisted, and I have no reason to doubt the truth of her statements as to the treatment she herself experienced at the hands of the prisoner ; her story is not consistent as regards her intimacy with the prisoner ; her own relation of the circumstances, and her conduct, are, in my opinion, proof of previous acquaintance and willing companionship with the prisoner up to the time of the occurrences to which this trial refers. There is no independent proof in the record to establish the third count on which the prisoner is charged. I would therefore acquit him of the theft. The prisoner's conduct to herself is told without any discrepancies, and apparently without any ground for supposing it to be a false accusation against the prisoner. I would convict him of an attempt to murder, and sentence him to imprisonment for life in transportation.

" I do not concur in a conviction of wilful murder of Ramdaine or in the proposed sentence. The sessions judge in his letter of reference says :—' The woman did not know that her child was in the well, and accounts for it by supposing (reasonably enough) that he was thrown in immediately after herself, while she was bewildered by the terror and force of the fall. The actual murder of the child, is therefore not directly established by her testimony as an eye-witness.'

" This is quite correct ; but if the murder is not established by her evidence, where is the evidence of another to be found in the record. Eye-witness to the fact there is not one, and what is the proof which ' rests upon circumstantial evidence of *the strongest and most conclusive kind,*' that the prisoner threw the child into the well ? Musst. Nunkee *suspects* the prisoner ; she knew not that the child was in the well till Achumbi, a witness, descended to her assistance. Her suspicions are reasonable, but her evidence, which *on this point* is in no way supported by other witnesses, does not amount to that degree of legal proof which would justify a conviction and capital sentence. I acquit the prisoner of the first count of the charge on which he is arraigned."

1852.

October 1.
Case of
HULKHOORE
Roy.

PRESENT:

A. J. M. MILLS, Esq., *Officiating Judge.*

GOVERNMENT

versus

HORIL RUJWAR.

1852.

October 2.

Case of
HORIL RUJ-
WAR.Conviction
and sentence
proposed by
the sessions
judge, affirm-
ed.

CRIME CHARGED.—Highway-robbery and plunder of property valued at rupees 16, belonging to Chetoo Mahoorree and Jhuree Mahodree, his son, and Bissbo Sonar, witnesses, attended with slight beating.

Committing Officer, Mr. F. C. Fowle, magistrate of Behar.

Tried before Mr. T. Sandys, sessions judge of Behar, on the 14th August 1852.

Remarks by the sessions judge.—“ This trial is supplementary to that of Government *versus* Jhundoo Rujwar (prisoner No. 1) and Dhotna Rujwar (prisoner No. 2), convicted of highway-robbery and plunder of property valued at rupees 16, and sentenced each to five (5) years' imprisonment, with labor in irons, *vide* trial No. 1 of Statement No. 6, for the month of June 1852. ‘ Jhuree (witness No. 2), son of Chetoo (witness No. 1), kept a shop at Ookree, distant about half a mile from ‘ Byjoo Beega, where they resided. Bissoo (witness No. 3), also ‘ of Byjoo Beega, in like manner had a shop at Ookree. Bissoo ‘ and Jhuree were returning home together on the evening of the ‘ 15th April last, when about half-ways, they heard an alarm ‘ set up by the father Chetoo, who was in the habit of going ‘ part of the way to meet his son; and running up they found ‘ him attacked by Jhundoo (prisoner No. 1) and Dhotna (prisoner ‘ No. 2), and other robbers, recognized and named, but who have ‘ absconded; slightly beating both father and son, they plundered ‘ them of everything they had about them, including the ‘ ornaments worn by the son. ‘ These three persons depose to ‘ the foregoing particulars, and their recognition of the prisoners.’

“ The prisoner, also a resident of Puarwareya, was apprehended on 6th June last, as he told the police having run away through fear of the prosecution, and as he pretended before this court, on a visit to his wife's relatives. He has always pleaded ‘ not guilty’; has alluded to a frivolous grudge with the eye-witnesses about some fish, and set up an extraordinary *alibi*. That having heard of his father's death (false), a convict in the Gya jail, he visited Gya, remained there some three or four days, conversed repeatedly with two prisoners, called as witnesses in proof Nos. 4 and 5, who informed him his father was alive, and like them then out at work, but notwithstanding he never succeeded in meeting his father.

"The *futwa* of the law officer, taking exception to the prisoner's never having been named in the witnesses' original depositions, and resting on his *alibi* as proven by the two witnesses, Nos. 4 and 5, whom, as prisoners in jail, it would have been difficult to tutor, acquits the prisoner.

"The first objection is incorrect. The original thanna depositions are on the record, in which Chetoo alluded to the prisoner as Khoonee's son; and Jhuree (witness No. 2) and Bissoo (witness No. 3) both named him as amongst the other thieves. The second objection carries no weight in my mind, as the *alibi* on its own showing is a manifest concoction, fittingly supported by two convicts, who can be as easily if not more easily tutored than other people. A son hears of his father's death, a convict in jail, hovers about the jail for days, though his father is a working prisoner without meeting him, and at last leaves Gya content with not having met him, on the assurance given him by two other convicts, his witnesses, that he was alive. With this disposal of the law officer's objections, I find nothing in the evidence for the prosecution which does not stand equally good for the prisoner's conviction as it did on the first occasion, when the law officer concurred in the conviction of the prisoners Jhundoo Rujwar and Dhotna Rujwar; and thus differing, occasions the present reference. I convict the prisoner of highway-robbery attended with slight beating, and would sentence him to five (5) years' imprisonment, with labor and irons."

Remarks by the Nizamut Adawlut.—(Present: Mr. A. J. M. Mills.)—"I concur with the sessions judge. The guilt of the prisoner is fully established, and I confirm the sentence recommended, *viz.*, five (5) years' imprisonment, with labor and irons."

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Case of
HORIL RUJ-
WAR.

PRESENT :

SIR R. BARLOW, BART., *Judge.*

GOVERNMENT

*versus*KEOJOFROO (No. 1), DOBASHIEEAIH (No 2,) KAI-
WOYAI (No. 3) AND DOONGCHIAE (No. 4).

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The prison-
ers were ac-
quitted on ac-
count of the
unsatisfactory
nature of the
evidence a-
gainst them,
notwithstand-
ing the alleg-
ed confessions
of two of their
number.

CRIME CHARGED.—Nos. 1 to 4; 1st count, highway-robbery, attended with wounding of witness No. 1, and assault on the persons of witnesses Nos. 2, 3 and 4, and stealing from witness No. 1, Company's rupees 199-8-0; and 2nd count, accomplices in the above crime; and Nos. 1 and 2, 3rd count, having in their possession stolen property knowing it to have been so obtained.

Committing Officer, Mr. J. R. Muspratt, magistrate of Chit-
tagong.

Tried before Mr. A. Forbes, officiating additional sessions
judge of Chittagong, on the 25th August 1852.

Remarks by the officiating additional sessions judge.—“The law officer convicts all four prisoners; but in my judgment they are all entitled to an acquittal. With the exception of the evidence of the four parties robbed, there is not an iota of evidence against them.

“I will endeavour to state the leading facts in the story of the party robbed, which, though fully capable of being corroborated, are not corroborated at all. I will then point out the many instances of contradiction and inconsistencies in their statements: the defectiveness of the evidence regarding the finding of the property, and my reasons for rejecting the confessions of two of the prisoners.

“Witnesses Nos. 1, 2 and 3 say, that for many years they have established a podar's shop in mouza Gulla Cheepa in Arracan, where they make gold and silver ornaments. That they had won the confidence of all their employers, and that, at the suggestion of their employers, in consequence of the prevalence of cholera, they left Gulla Cheepa on the 26th Phagoon, for the purpose of returning to their own house in thanna Juldee, in this zillah, taking with them all the silver entrusted to them to make up, amounting, with their own gold and silver, to rupees 199-8. They reached Mungdoo hát on the southern bank of the Noaf river, at 3 p. m. of that day, and they there engaged the services of witness No. 4, to carry two bundles of clothes and a fawn: and they proceeded on that day to the shop of Sacheeram podar, where they passed the night. On the following day, the 27th, they proceeded on and reached a place called Burodab, where they stop-

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ped ; but leaving that place in the middle of the night, they reached Monakhalee by day-break of the 28th Phagoon, and proceeding on they reached Ropobuttee Sura (a hill stream) by mid-day. Here they saw two Mughls fishing, one carrying the net, prisoner No. 4, and the other carrying the basket, prisoner No. 3. When they got near them, prisoner No. 3 ran up to the jungle and called out in the Mughee language ; and immediately ten or twelve Mughls, armed with spears, guns and pistols, rushed out of the jungle, all having their faces coloured, with the exception of prisoner No. 1, who immediately struck witness No. 1 two blows on the head with a cudgel, and seized and took away the bundle he was carrying on his shoulder, containing all the gold and silver belonging to the party. Some of the other witnesses were also beaten, and the coolie, witness No. 4, was also beaten and robbed of rupees 16 and two pieces of cloths. Witnesses Nos. 1 to 4, then proceeded on to the dāk bungalow at Putooa-teek, where they met with assistance. They then proceeded on and crossed the Enonee river in a boat, and stopped at the house of Sachee Sikdar, the proprietor of the land on which they were robbed, and reported to him what had occurred ; and they then went on to a village called Gwalia-palung, in the Ramoo thanna, where they stopped at the house of Punchunder, podar. On the following day they proceeded on, passing through the village of Ramoo, where the thanna of Ramoo is located, to the Baghkhalee river, where the three podars, witnesses Nos. 1, 2 and 3, embarked on board a boat which took them to their home in thanna Juldee. The darogah of the thanna preferred a list of the property stolen from witnesses Nos. 1, 2, 3 and 4.

“ The route this party took was by the sea shore for nearly the whole way from the Teeknaaf thanna to the Rozoo river, and a thick jungle for the most part reaches to the margin of the sea shore.

“ The proceedings of the darogah in the case compose an immense bundle of papers which occupied me nine hours in reading. The darogah's proceedings relate to three highway-robberies committed by a party of Mughls near the same place on the same day ; and the prisoners Nos. 1 and 2 confess that they committed or were concerned in these three robberies. The second robbery is said to have been committed on a party belonging to the family of Roushun Ale, the son of Ale Mahomed, who resides at mouza Harban, in thanna Chukeriah. The father or son would appear to hold a tehsildarship in Arracan, and part of his family are said to have been robbed in their way home. The darogah of the Chukeriah thanna, however, has more than once reported that the family of Roushun Ale positively deny all knowledge of the robbery, or that any

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body connected with the family returned from Arracan in the month of Phagoon. The third robbery is said to have been committed on a body of thirteen coolies returning from Arracan to Sundeep; but the darogah of Sundeep reports that after making every inquiry among the coolies, who have returned from Arracan, he can obtain no information regarding any robbery having been committed.

"In the calendar it is stated that dāk hurkara, witness No. 20, reported this affair to the thanna; but before this court and before the magistrate, he positively denied all knowledge of the robbery of witnesses Nos. 1 to 4, or that he ever gave information of this robbery to the thanna. The darogah forwarded a deposition of this witness, dated 20th March, in which the witness is made to state that he had heard from the son of Ramchunder, of Omkhalee, of the robbery of three birniks or sonars and a Mussalman coolie. The darogah's report of the 23rd March shows that he learnt the names of witnesses Nos. 1, 2 and 3, from Sacheeram, the person apparently at whose shop the witnesses passed the night of the 26th Phagoon. Sachee states in his deposition taken by the darogah that the three had passed with money, and that he had since heard that they had been robbed. On this information the witnesses Nos. 1, 2 and 3, were sent by the police of the Juldee pharee to the darogah of the Teeknaaf thanna.

"My first object was to ascertain what had become of the original accounts, from which I supposed the list of the fifty-three gold and silver articles and coins had been prepared.

"Witness No. 1 could not state the articles he had been robbed off. He alleged that Bujuram (No. 3) kept the accounts, and the thanna mohurir prepared the list through him.

"Tehaerem says that the thanna mohurir prepared the list from the verbal information communicated by all three; but he is only able to mention one or two articles included in the list.

"Bujuram states that the thanna mohurir prepared the list from the information given by Radharam; and this witness enumerated a number of articles from memory, hardly one of which can be identified with a corresponding article in the list.

"The only points on which the parties agree, are that they kept no written accounts; that they had gold, weighing in the aggregate one or two annas less than two tolahs; and that they cannot state the aggregate number of rupees that Radharam had in his bundle when he was robbed.

"Though they are nearly agreed as to the weight of gold, they differ as to whom it belonged. Radharam states, that one tolah of gold belonged to the shop and fifteen annas to their customers: the other two state that all the gold belonged to

them. According to the list the coins robbed from them are

Sicca rupees,	7	0	0
Company's rupees, ...	66	0	0
Fraction of rupees, } not specified,	1	10	0
Seven half rupees,	3	8	0
One two anna bit,	0	2	0
One one anna bit, old,	0	1	0
	77	5	0

noted in the margin. Radharam states that they had only rupees 52 in cash. Tehaeram states that between rupees 40 or 50 belonged to the shop; but cannot state the aggregate amount of cash. Company's rupees 44 is the sum entered in the list as belonging to the

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party. Bujuram states, that there were Sicca rupees 7 in the burdle, but cannot state the aggregate number of Company's rupees, and he states, that there were no half or quarter rupees or small coin in it. The list would show that some of the small coins were entrusted to the party for the specific purpose of having a loop attached to them for stringing on a necklace.

"It will be observed, that the list of property stolen shows that the robbers thought it worth while to rob the coolie of two articles of his clothing; but they found nothing apparently worth stealing in the two bundles of clothing the coolie was hired to carry. The coolie did not mention before this court the loss of his clothing. I did not think it necessary to remind him of the omission by putting a leading question.

"The next extraordinary part of this prosecution is, that these four men, though robbed of so large an amount, several articles entrusted to three of them being specific articles, which they were to return, as they were given to them merely to repair, they yet failed to complain to the police, though they passed close to a police station the next day; that they cannot produce a single person to whom they communicated the fact of their having been robbed before the three were sent for by the police at Juldee, and the fourth by the Teeknaaf darogah; and the many discrepancies in the evidence of the witnesses Nos. 1, 2, 3 and 4, regarding facts occurring after the robbery.

"Radharam states, that they told the *three* dāk hurkaras of the robbery, whom they found at the dāk house at Putooa-teek; that they then gave information to Sachee Sikdar, the zemindar, on whose land they had been robbed; and that they then went on to the house of a birnik, or podar, at Gwalia-palung; and that they did not give information at the Ramoo thanna, because he was disabled by his wounds, and his brother Bujuram had the cholera.

"Tehaeram states, that at the dāk house of Putooa-teek, they fell in with one dāk hurkara, who was called Balla Cap, who gave them oil to rub on Radharam's wounds and *chura* to eat, and to whom they communicated the robbery. That he proposed to return with them to the Teeknaaf thanna, but they

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refused, because the dacoits had threatened to kill them if they returned towards the south. That they proceeded on to the house of Sachee Sikdar, and reported the robbery to him; and they then proceeded to Palung, where they slept at the house of Chunder Sodagur, to whose son they communicated that they had been robbed; and that they did not give information at the thanna at Ramoo the next day, because Biju had the cholera. One would suppose, that after a party had been robbed and well cudgelled by a gang of robbers, any instructions the robbers might give them regarding their future movements under a threat of murder, would have been well remembered by the whole party, but though, according to this witness, the proposal to return to the south was debated at the dāk house, and rejected on account of the threat of the robbers, yet no other witness mentions, or in any way alludes to, the threat of murder or prohibition to return to the south.

“Bujuram states, that there was only one dāk hurkara at the Putooa-teek dāk house, who gave oil to Radharam; and that he got *chura* from the shop-keeper who was also at the dāk house; and that they informed the dāk hurkara of the robbery, and that they proceeded to the house of Sachee Sikdar, and reported the robbery to him; and they then proceeded to the house of Chunder Sodagur at Gwalia-palung, and passed the night there; and that they informed the youngest son of Chunder Sodagur of the robbery; and that the next day they embarked on board a boat on the Bagkhalee river, at a place about two *coss* from the thanna of Ramoo; and that they did not give information at the thanna, because Radharam was laid up by the wounds he had received from the dacoits. That he (Biju) had the cholera at Gulla Cheepa, but had no cholera near Ramoo.

“Now the only point of importance on which these three witnesses agree, is the fact of the visit to the house of Sachee Sikdar. The calendar, as well as the deposition of Radharam itself, shows that the first statement or complaint of the robbery was given to the darogah on the 5th April. If, however, the return of the darogah, dated 22nd April, and the subsequent deposition of Radharam made on the 22nd April, be referred to, it will be found that this visit and report to the zemindar was never thought of until the 22nd April, seventeen days after the complaint, and a month and seventeen days after its alleged occurrence. Sachee Sikdar denies that they ever came to his house.

“Neither the one hurkara, seen at Putooa-teek dāk house by Tehaeram, the two men seen at that place by Bujuram, or the three dāk hurkaras seen there by Radharam, or the shop-keeper seen there by the coolie, have been called as witnesses to prove that this party on their arrival there mentioned the robbery. They state that the men they severally saw were present when

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the darogah held his investigation at a place called Niddunea, close to Putooa-teek. The shop-keeper and dāk runners are all on Government pay, and could of course have been traced at any time by the darogah. Some of the witnesses say, that the individual or individuals they allude to were questioned by the darogah, though the result of their examination has not been reported.

“Witness No. 4 states, that the three preceding witnesses, hired him to carry the two bundles of clothes and a fawn; that after the robbery they saw only the shop-keeper at the Putooa-teek dāk house; and that they told the son of the ferryman on the Enonee river of the robbery, to whom the witnesses Nos. 1, 2 and 3, gave the fawn; and that they also told Sachee Sikdar of the robbery; that he remained in company with witnesses Nos. 1, 2 and 3, until they embarked on board a boat at Omkhalee, in mouza Metasura, where he resides, and that he was paid the six annas for his labor before-hand at Mungdoo hāt.

“After this witness I recalled the first three. Radharam stated that they threw away the fawn at the Putooa-teek dāk house; that they discharged Hossein Alee at Gwalia-palung, and that he paid him part of his wages at Mungdoo, but how much, he cannot recollect; that they discharged Hossein Alee at Gwalia-palung, but he still kept in company with them until they embarked at Omkhalee.

“Tehaceram states, that they threw away the fawn at Putooa-teek dāk house; that they discharged Hossein Alee at Omkhalee, where they embarked, and that they paid him no wages, as they had no money; and that he released them from all demands on that account, saying that they had all been robbed.

“Bujuram states, that they gave the fawn to the dāk hurkara at Putooa-teek; that Hossein Alee left them to proceed to his own house at Gwalia-palung; and that they had paid him the whole of his hire at Mungdoo hāt; and that they embarked on board a boat at Suggur Mahomed's ghat on the Bagkhalee, which ghat is to the west of Wanja-bheel and to the east of Moonshée-khal.

“Wanja-bheel is by the map about seven miles to the west of thanna Itamoo, and Omkhalee is two and a half miles to the west of that thanna.

“Is it to be credited, that if this party had been really robbed, that neither the dāk hurkaras, nor the *moodee*, or the ferrymen on the Enonee river, or the ferrymen in the Rozoo river, or the person at whose house they passed the night of 28th Phagoon, or the party of whom some of them say they borrowed money to pay for their boat at Omkhalee, would have been found willing to depose to the fact of the party having told them of the robbery? What else can be safely inferred from the fact of

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no single witness appearing to prove that the party told them of the robbery, than that the party never mentioned the robbery to any one? If, then, they never mentioned the robbery to a single individual or to the police, can any one believe that they were ever robbed in the way they say they were?

"The police at the Juldee pharee did not take the depositions of witnesses Nos. 1, 2 and 3, before sending them to the darogah of Teeknaaf.

"The police at thanna Ramoo did not take the deposition of Hossein Alee. It appears the darogah of Teeknaaf, with the concurrence of the police of Ramoo, sent witnesses Nos. 1, 2 and 3, with a burkundauz of the Teeknaaf thanna, to the house of Hossein Alee, and brought him to the Teeknaaf darogah, who was conducting his proceeding in the case at a place called Niddunea.

"Witnesses Nos. 1, 2 and 3 state, that on their way to the Teeknaaf thanna, they found the darogah at Niddunea; that they arrived there at night, and on the following morning three *paras* (communities) of Mughls were paraded before them, and they recognized prisoners Nos. 1, 3 and 4, out of about sixty or seventy Mughls. It is customary for the police to send in evidence of the apprehension of prisoners. If ever a case required evidence of this sort, it is this. But there are no witnesses to the apprehension. The evidence of the three witnesses regarding the manner in which the Mughls were paraded before them, and they managed to identify them, is vague, uncircumstantial and unsatisfactory. And I may here state that throughout the trial witnesses Nos. 1, 2, 3 and 4, gave their evidence with extreme reluctance and slowness, and it was with the utmost difficulty that distinct replies to any question, however trivial, could be elicited from them at all.

"Witness No. 4 states, that on his arrival at Niddunea the sixty or seventy Mughls were paraded, and that he and witnesses Nos. 1, 2 and 3 recognized prisoners Nos. 1, 3 and 4. But witness No: 4 did not reach Niddunea before the 10th or 11th April.

"The prisoners Nos. 1, 3, and 4 were apprehended on the 5th April, according to the evidence of witnesses Nos. 1, 2 and 3. In the calendar the dates of the apprehension of the three prisoners were given as the 11th, 12th and 14th April, respectively. The report of the darogah, dated 5th April, written on the back of the magistrate's *purwannah*, dated 27th March, proves that the prisoner Keojofroo was recognized by witnesses Nos. 1, 2 and 3, on the 5th April, and that the darogah had only on that day received information from the darogah of Ramoo, that the coolie Hossein Alee had been found. The deposition of Radharam, recorded by the darogah on the 5th April, refers to

the recognizing of Keojofroo, Kaiwooyai and Doongchae, by him. The dates of the apprehension of the prisoners inserted in the calendar prepared by the magistrate, it will be observed, have been taken from the calendar or *chelan* of the darogah, dated 24th April. This falsification of the dates by the darogah must have been wilful, and intended to conceal the unlawful detention of the prisoners from the 5th to the 11th, 12th and 14th April.

"Witnesses Nos. 1, 2 and 3, arrived at dark on the evening of the 4th April, and the prisoners Nos. 1, 3, and 4, were recognized by them early the following morning. In what manner, or by whose agency, the darogahs managed to assemble sixty or seventy Mughls at so short a notice, is not explained by the record. The prisoners allege that they were kept in confinement for a month before being sent to the magistrate.

"The confession of Keojofroo was not recorded by the darogah until the 12th April, at least one week after his apprehension. This prisoner reached the sudder station on the 16th April, on which day he denied, in his reply taken by the magistrate, having committed the robbery, and alleged that he had been kept in the stocks by the darogah for nearly a month, and had been repeatedly beaten during that time.

"By his report, dated the 10th April, the darogah communicated the apprehension of Dobasheeah; he is a boy about 15 years of age, and can read and write with great facility, and appears naturally very quick; but the unhappy boy is subject to frequent attacks of mental aberration. His confession was not taken until the 20th April. His confession states that he accompanied his father into the jungles, with whom he remained; that his father cooked, whilst twelve or fourteen other Mughls went out and committed robbery; and that his and his father's share of the plunder amounted to rupees 13. He repeated his confession to the magistrate on the 26th April. Before this court he alleges that his confession was extorted by violence by the darogah who threatened to beat him again if he did not repeat his confession to the magistrate; and who also made him swear by fire to repeat his confession to the magistrate.

"The reply of Kaiwooyai was recorded by the darogah on the 14th April, and that of Doongchae on the 15th April. Both have uniformly denied committing the robbery.

"Of the valuable part of the plunder, Company's rupees two alone are purported to have been recovered. These were recovered from the mother of Dobasheeah. The only witness, No. 15, Bux Alee, to the finding of this money, deposed before this court that when the darogah determined to send Dobasheeah to the magistrate, he ordered a party to go and fetch Dobasheeah's *khorahee* (maintenance) and his clothes; and that he, Bux Alee,

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with Manjee and a burkundauz, went with Dobasheeah to his house; that Dobasheeah's mother gave for Dobasheeah's use the rupees two, with one anna in copper, and three articles of clothing; but that he did not understand what passed between the mother and son in the Mughee language. The other witness Manjee (No. 18) deposed before this court, that he had no recollection of finding the rupees, and did not know where they were found. Bux Aleo before the magistrate deposed that Dobasheeah, (prisoner No. 2) admitted that the rupees two he received from his mother was part of the plunder.

“ The other property found is not worth the smallest copper coin. It consists of an old round wooden box with that smooth appearance produced by long and frequent use; and a torn purse, and a very dirty bag. The party was robbed of this property on the 5th March, and it was found on the 13th April in the jungles at one of the lurking-places of the robbers. It had thus been fully one month and seven days exposed to the weather in the open air. By careful inspection, I could not find the slightest trace of mildew, or other spots or marks that I should certainly expect to find on articles of the sort, had they been exposed to the effects of the atmosphere for so long a time. The evidence to the finding of this property is not satisfactory. The witnesses appear to have followed the chowkeedar and prisoner No. 1 to the place in the jungles; but they are unable to explain who really pointed out the place and the property when they got to it.

“Although the Mughls are said to have been armed with pistols, guns and spears, the darogah has only been able to find four spears, which he has sent in with a bundle of faggots, represented as *lattees*. Prisoner No. 1 confesses to stealing two measuring chains from a second party. Measuring chains are articles not easily concealed or disposed of; and if these robberies had really been committed by the prisoners, it is astonishing that the darogah has been unable to trace either.

“ The illegal detention of the prisoners Nos. 1 and 2, deprives their confessions to the darogah of all weight, and I cannot convict on the repetition of the confession of prisoner No. 2, a partially insane boy, to the magistrate immediately after the arrival of the prisoner at the sudder station.

“ The darogah has, in my opinion, shown himself totally unfit for the important situation he holds. He should have explained, when, and through whom, he summoned sixty or seventy Mugh. If he felt himself justified in assembling sixty or seventy Mugh for the witnesses to look at, he should not have neglected to have had present respectable witnesses to satisfy the court in what way the witnesses recognised the prisoners. He has also neglected to send in as witnesses the *moodie* and the *dāk hurkaras* at the *Putooa-teek dāk house*, or the *ferry-men* on the *Enonee* and

Rozoo rivers. I could not send for them, as the witnesses do not know their names. If he questioned them, as some of the witnesses allege, his conduct in concealing the fact of their denying having seen witnesses Nos. 1 to 4, is unjustifiable."

Remarks by the Nizamut Adawlut.—(Present : Sir R. Barlow.) —"The particulars of this case are very fully reported by the officiating sessions judge. The story told by the witnesses Nos. 1, 2, 3 and 4, who were, as alleged, the parties robbed, is quite inconsistent and most improbable. The discrepancies deprive it of all credibility. No charge was laid at the thanna till the darogah sent for Radharam and his party a month after the occurrence, when having collected some sixty or seventy Mughls, the witnesses, to whom the prisoners were quite unknown previously, pointed them out. No reliance can be placed in the confessions of the prisoners Nos. 1 and 2, for the reasons assigned by the sessions judge, nor is the finding of the property, upwards of a month after the robbery, in the jungles, *i. e.*, the finding of rupees two, an old purse, and a small *paun* box, any sufficient proof, if even the circumstances attending it were proved, for conviction.

"I concur with the sessions judge in the acquittal of the prisoners; they will be immediately released."

PRESENT :

W. B. JACKSON, Esq., Judge.

GOVERNMENT

KALACHAND GHOSE.

CRIME CHARGED.—Having belonged to a gang of dacoits. Committing Officer, Mr. S. Vauchope, commissioner for the suppression of dacoity.

Tried before Mr. E. Bentall, additional sessions judge of Hooghly.

Remarks by the additional sessions judge.—"The prisoner pleaded 'guilty' of the crime with which he is charged, as he had previously done before the commissioner for the suppression of dacoity. In his detailed confession he described eleven dacoities, in all of which he was engaged under a leader called Gour Shekaree. The dacoities were committed in Chandernagore, Baraset, Kishnaghur, 24-Pergunnahs and Hooghly; and I forward original documents, showing that three of them did occur. The prisoner made no defence, but again acknowledged his crime. I accordingly found him guilty, and propose that he be sentenced to transportation beyond sea, for life."

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GHOSE.

A party convicted under Act XXIV. of 1843, for "belonging to a gang of dacoits," and sentenced to transportation for life.

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KALACHAND
GHOSE.

Remarks by the Nizamut Adawlut.—(Present: Mr. W. B. Jackson.)—"This prisoner, Kalachand, is charged with belonging to a *gang of dacoits*, under Act XXIV. of 1843. The prisoner throughout the trial confesses the crime charged against him and details the particulars of several dacoities in which he has been engaged at full length, mentioning the place of occurrence, the names of the dacoits and the property obtained, as well as the minute circumstances in detail. It remains to consider whether he can be convicted under the Act cited. Regarding the meaning of this Act some doubt has been entertained, because the preamble refers to 'professional dacoits belonging to certain tribes systematically employed in carrying on their lawless pursuits in different parts of the country,' and it has been argued that the enacting part of the law, which extends the provision of the Thuggee Acts, refers only to '*professional dacoits* and to *these particular tribes*, and only to them when *systematically employed*' as described, and cannot therefore be applied to all persons proved to be engaged with a gang of dacoits, or to belong to the gang though not so engaged.

"It appears to me that if the enacting part of an Act is clear in its expressions, and beyond a doubt as to its meaning, we are not to go back to the preamble to explain and limit that meaning; and even when there is doubt, the reference to the preamble should rather be directed to the intent there expressed for the future, than to the circumstances mentioned as the inducement to pass the Act; the circumstances may be limited to particular individuals or classes, and yet those circumstances may form sufficient inducement to pass a general law; and if the enacting part of the law is general in its expression, the courts of justice have no right to limit its operation, with reference to the limited nature of the circumstances which induced the enactment, particularly when the enacting part is quite clear and divested of such limitation.

"Now in this law the enactment is clear, it refers (S. I) to any one who shall be proved '*to have belonged to any gang of dacoits*;' it is not necessary to prove that he actually went on any particular dacoity, or took an active part in such a crime; all that is necessary to subject him to the penalty is proof that he has belonged to a gang, *i. e.*, to a body of men banded together for the purpose of committing dacoity, or who have committed dacoity, and were, at the time the party belonged to them, still banded together as dacoits; the expression is made as general as possible, and to render it more plain that it was intended to be so, the same Section declares the rule general, both as respects time and place, that is either '*before or after the passing of this Act*,' and either '*within or without the territories of the East India Com-*

'pany.' The express object is to make the law general and free of all restrictions. Now it is true that the preamble says it is necessary to adopt more stringent measures for the conviction of *professional dacoits* belonging to *certain tribes*, and that the law is passed to attain that object; but it is very possible that it was impossible to obtain a conviction of dacoits of that peculiar description, except by the passing of a general law, which would include them with dacoits of other descriptions, and it seems to me that this is precisely what the law intended to do, and what the law has done. These professional dacoits could not be reached on the ground of their specific acts of robbery, because they came from a distance, are not known, are systematically disguised, &c. &c., therefore the law says any man *belonging to a gang of dacoits* shall be liable to punishment: the reasoning is to me quite distinct and categorical; it might with more justice be said, that the preamble describes the intention of the law to be to extend the Thuggee Laws to persons concerned in the *perpetration* of dacoity, and therefore the mere belonging to a gang without being engaged in the *perpetration*, will not render a party liable, but such an argument cannot for a moment be admitted, as the law distinctly includes persons who have merely belonged to a gang. The reasoning in both the cases is the same; we cannot establish the perpetration against the individual, but we may establish the fact of belonging to a gang; the law therefore assumes that belonging to a gang shall subject a party to punishment, and very justly too, for if a man belongs to a gang of dacoits, it is strong presumptive evidence that he has committed or intends to commit dacoities.

"I have therefore no doubt that the enacting part of the law is not limited by the terms of the preamble, and that it was never intended to be so limited, and the mere belonging to a gang is criminal and punishable under the Act: the only points necessary to establish criminality, are—*first*, that it was a gang of dacoits; *secondly*, that the party belonged to it.

"As to the fact of the party being a *professional* dacoit, or belonging to *certain tribes*; as the particular tribes are not specified, and no definition is given to distinguish a dacoit by profession from a dacoit by practice, I conceive that it could not have been the intent of the legislature to make these particulars essential to a conviction; it does not therefore matter whether the party belonged to one tribe or another; whether he was professional or empirical; or whether he was actually engaged in the perpetration of any dacoity; the simple fact of belonging to the gang is sufficient to bring him within the Act.

"I convict the prisoner, Kalachand Ghose, of having belonged to a gang of dacoits, and sentence him to transportation for life, beyond sea."

1852.

October 4.

Case of
KALACHAND
GHOSE.

PRESENT :

W. B. JACKSON, Esq., *Judge*.

GOVERNMENT

versus

GOYAZUDDIN (No. 2).

1852.

October 4.

Case of
GOYAZUDDIN.Conviction
and sentence
affirmed in ap-
peal.

CRIME CHARGED.—Wilful murder of Reshee Bebee.

CRIME ESTABLISHED.—Culpable homicide of Reshee Bebee.

Committing Officer, Mr. H. S. Porter, deputy magistrate of Duckin Shahbazzpore, Noacolly, Tipperah.

Tried before Mr. H. C. Metcalfe, sessions judge of Tipperah, on the 26th July 1852.

Remarks by the sessions judge.—“The prisoner No. 2 was charged with the wilful murder of his wife, Reshee Bebee, and the prisoners Nos. 3, 4, 5 and 6, with being accessaries after the fact, and in a second count, with privy to the said murder.

“It appears that the prisoner’s wife had prepared his rice, and placing it behind him on the ground in a dish, had turned her attention to some other domestic duty. A cock commenced picking the rice, and the prisoner, being excessively angry, struck and kicked his wife, nine or ten times, with so much severity, that she fell and immediately expired.

“The above is the gist of the charge against this prisoner. Prisoners Nos. 3, 4 and 5 are the headmen of the village, and prisoner No. 6 is the chowkeedar. They are stated to have joined in an attempt to shield the prisoner No. 2 from the consequence of his violence. The first idea suggested was, that a rope should be procured, and that the deceased should be reported as having hung herself. This plan was rejected, because it would inevitably lead to troublesome inquiries on the part of the police; and it was resolved that her death should be attributed to cholera. This was done, and her body buried. Twenty-three days after, the witness No. 18, a Mussulman fuqeer, gave information to the police of the real circumstances attending the woman’s death, and the prisoners were apprehended.

“The prisoners Nos. 2, 4, 5 and 6 pleaded ‘not guilty.’

“Prisoner No. 3 pleaded ‘guilty’ on the first count, accessoryship after the fact.

“Witnesses Nos. 1, 2, 3 and 4 deposed distinctly, as eye-witnesses, to the prisoner No. 2’s violence, its inadequate cause, to Reshee Bebee’s immediate death. They added that he entreated their silence as to what had occurred.

* Prisoners Nos. 3, 4, 5 and 6 were acquitted by the lower court.

1852.

October 4.

Case of
GOYAZUDDIN.

"Witnesses Nos. 5 and 6 deposed to the answer of prisoner No. 3, in the Mofussil, and witnesses Nos. 7 and 8 to the same, prisoner's answer before the deputy magistrate. On both occasions he stated, that he had seen the body at the prisoner's house when called there, in consequence, as he was told, of her having died from a snake-bite. He proposed intimating the circumstances at the thanna, but this advice was rejected by prisoner No. 5, who remarked that as it was known to themselves only they had better bury the body. This was done. Two days after he inquired of prisoner No. 2 of what disease his wife had died, and was told she had hung herself. He did not inspect the body when it was brought to be buried. These answers evidently do not amount to an admission of accessaryship after the fact, as they do not show that he was aware that the prisoner's wife had met with a violent end.

"Witnesses Nos. 10 and 11 deposed, that having gone to prisoner No. 2's twice to smoke, they overheard prisoners Nos. 3, 4, 5 and 6 consulting to circulate a report that the woman had died of cholera. Witness No. 10 said, that he was there for a moment only; the other witness, No. 11, that he merely passed by, and that the prisoners were instantly silent when they saw the witnesses. I consider all this quite incompatible with overhearing a discussion on such a subject, the nature of which it would require some time to understand; whereas the stay of both witnesses was but momentary, for they left without smoking. The evidence of the remaining witnesses rest solely on hearsay, and is of no value.

"The prisoner Goyazuddin's defence was, that his wife died of cholera.

"Prisoner No. 3 made a similar statement as to the cause of Reshee Bebee's death, and added that in pleading guilty he confined his meaning to not reporting her death from cholera.

"Prisoner No. 4 pleaded an *alibi*.

"Prisoners Nos. 5 and 6 stated, that cholera caused the woman's death.

"The evidence for the defence amounted merely to the witnesses' having heard that Reshee Bebee had died of cholera, a disease prevalent at the time in the village. The Mahomedan law officer's *futwa* convicted the prisoner Goyazuddin of the culpable homicide of his wife, Reshee Bebee, and acquitted the remaining prisoners. In this finding, I concurred.

"The prisoner's wife was little more than a child, and the offence she gave her husband was of the most trifling nature, if, indeed, it can be considered one at all. For it, however, the prisoner, a man in the prime and vigour of life, assaulted her with such gross severity and repeated blows, that she died on the spot. I sentenced him as shown in column 12."

1852

October 4.

Case of
GOYAZUDDIN.

Sentence passed by the lower court.—Five (5) years' imprisonment, with labor and irons.

Remarks by the Nizamut Adawlut.—(Present: Mr. W. B. Jackson.)—"I see no reason to believe the evidence for the prosecution to be false or founded in enmity; the conviction is therefore in my opinion correct. The sentence is hereby affirmed."

PRESENT:

W. B. JACKSON, Esq., Judge.

MUNYAR KARPURDAZ

versus *

JUGROOP MULLA.

1852.

October 4.

Case of
JUGROOP
MULLA.

A party setting fire to cotton in a boat openly without attempt at concealment, convicted of incendiarism and sentenced to a mitigated punishment.

CRIME CHARGED.—Incendiarism*, in setting fire to a boat, laden with 425 bales of cotton, valued at about Company's rupees 11,000, and out of three bales, valued at Company's rupees 60, destroying 15 seers, valued at Company's rupees 4.

CRIME ESTABLISHED.—Incendiarism, in setting fire to a boat, laden with 425 bales of cotton, valued at about Company's rupees 11,000, and out of three bales, valued at Company's rupees 60, destroying 15 seers, valued at Company's rupees 4.

Committing Officer, Mr. A. Hope, officiating magistrate of Monghyr.

Tried before Mr. R. N. Farquharson, sessions judge of Bhaugulpore, on the 7th July 1852.

* *Extract from a letter from the Register of the Nizamut Adawlut to the Sessions Judge of Bhaugulpore, No. 1192, dated 28th August 1852.*

"The Court having had before them your letter, No. 166, of the 17th instant, submitting the statements connected with the sessions of jail delivery, held by you in the month of July last, observe, with reference to the case of Jugroop Mulla, No. 3, of statement No. 6, that you have not explained why you did not think the act charged amounted to arson, which, by the Circular Order referred to, embraces setting fire to a boat laden with merchandize exactly as set forth in column 9, containing the charge."

Extract from a letter from the Judge of Bhaugulpore, to the Register of the Nizamut Adawlut, No. 191, dated 14th September 1852.

"In the case of Jugroop Mulla, No. 3, of statement No. 6, of prisoners punished at the sessions of jail delivery of July last, I was of opinion that the case was rather one of incendiarism than arson, inasmuch as the crime took place in broad daylight, at 8 A. M., when the boat being at the time fastened to the shore, and many persons present, some of whom depose to having seen the prisoner apply the fire to the cotton. I inferred from this that the prisoner did not wish to do more than frighten the churundar, or rather person in charge, by a demonstration of burning the cargo without any real intention of destroying it. Little damage was indeed actually done; not a seer of cotton probably damaged, and no lives would have been endangered by the conflagration, even if it had occurred on the river bank, at that time in the morning. These were my impressions when writing to the magistrate in the first instance, and afterwards

Remarks by the sessions judge.—“This case was originally committed as arson, but on my pointing out to Mr. Hope, officiating magistrate, the Circular Order of Nizamut Adawlut, No. 3, of the 5th June 1848, thinking the case might be within his own competency, that gentleman requested that the first commitment might be annulled and re-committed for incendiaryism; and under all the circumstances that are now brought forward, I think, with great propriety. The case is, I fear, one of common occurrence, and similar in character to the ship-burnings at Calcutta and Bombay. Prisoner received nearly his full hire to Calcutta at Mirzapore, in advance. Prisoner was manjée of a small *pulwar*, acting as tender to a large cotton boat; he was engaged from Mirzapore to Calcutta for rupees 36, receiving 34 or 35 in advance; and wishing to escape completion of his part of the contract attempted to cut short the voyage by setting fire to the cotton. The mischief, however, having been timely discovered, little damage was done. The evidence is slightly discrepant as to prisoner having been actually seen setting fire to the cotton; but his confession in the Mofussil and at the foudaree before the magistrate, is sufficient to convict him. The jury bring in a verdict of guilty, and I sentence Jugroop Manjee to five (5) years' imprisonment, with labor and irons.”

1852.

October 4.
Case of
JUGROOP
MULLA.

Remarks by the Nizamut Adawlut.—(Present: Mr. W. B. Jackson).—“Jugroop has confessed the fact that he set fire to the cotton because he had nothing for his maintenance, and the churidar refused to give him anything; this is no doubt incendiaryism, but as the act was done openly and in the morning, without any attempt at concealment either before or after, it appears to me that the prisoner did it out of bravado, knowing that the others about him would put it out immediately, and not with the intent to destroy the whole cargo; if that had been his object he would have concealed the act; still the act was a criminal one and amounted to incendiaryism. I do not therefore interfere with the finding, but think that imprisonment for one (1) year, with labor and irons, is sufficient; the remainder of the sentence is remitted.”

when I tried the case and sentenced the prisoner; but I was subsequently informed that the very same boat with all her cargo was burned and destroyed between this place and Colgong, which made me regret that I had been so lenient in my first view of the transaction.”

Extract from a letter from the Register of the Nizamut Adawlut to the Sessions Judge of Bhaugulpore, No. 1342, dated 22nd September 1852.

“The Court having had before them your letter, No. 191, of the 14th instant, desire me to state that you ought not to have interfered with the commitment originally made by the magistrate in the case of Jugroop Mulla. The offence charged was strictly arson according to the law, as clearly explained in the Circular Order of June 5th 1848, on which you acted.”

PRESENT:

A. J. M. MILLS, Esq., *Officiating Judge.*

HOREE MANGEE

versus

PROSHAD KAMAR (No. 24), DHURM KAMAR (No. 25 APPELLANT), KANHYA KAMAR (No. 26 APPELLANT) AND BYJA KAMAR (No. 27).

1852.

October 4.

Case of
DHURM KA-
MAR (appel-
lant) and
others.Conviction
and sentence
affirmed.

CRIME CHARGED.—Nos. 24 to 27, 1st count, burglary and theft of property, valued at rupees 7-8-0, in the house of the prosecutor; 2nd count, accomplices in the burglary and theft; 3rd count, being accessories in the said burglary and theft before and after the fact; 4th count, knowingly receiving and retaining stolen property obtained by the said burglary and theft; and No. 24, 5th count, having in possession two *sind-katees*.

CRIME ESTABLISHED.—Burglary and theft.

Committing Officer, Mr. G. C. S. Chapman, deputy magistrate of Deoghur, Beerbhoom.

Tried before Mr. R. B. Garrett, officiating sessions judge of Beerbhoom, on the 19th August 1852.

Remarks by the officiating sessions judge.—“A burglary and theft of property, valued at rupees 7-8-0, was committed in the house of the prosecutor on the night of the 20th May last.

“On the following day the houses of the prisoners were searched on suspicion of their having been concerned in the case of dacoity in the house of Nemain Mundle, when the property now produced was discovered, which they confessed to having stolen from the house of prosecutor. Their confessions before the deputy magistrate are satisfactorily attested and were virtually repeated on the 30th June, when on being committed to take their trial at the sessions, they named no witnesses for their defence. In this court they plead ‘not guilty,’ and disavow their previous admissions of guilt.

“The *fulwa* of the law officer convicts them of the crime charged; and in concurrence therewith I sentence Proshad Kamar and Byja Kamar, who are also convicted in the following case of theft, to two (2) years’ imprisonment, and Dhurm Kamar and Kanhya Kamar, to eighteen (18) months’ imprisonment, with labor in irons.”

Remarks by the Nizamut Adawlut.—(Present: Mr. A. J. M. Mills.)—“Dhurm Kamar and Kanhya Kamar have appealed, alleging that their confessions were extorted from them. They have adduced no proof of this plea. Their confessions are corroborated by the finding of a portion of the stolen property in their houses and the proof of their guilt is complete. I confirm the conviction and sentence.”

PRESENT :

R. H. MYTTON, Esq., *Officiating Judge.*

KALEE MOHUN MOOKHOPADHYA

versus

HEDAYUTULLAH (No. 20), UZZEEM (No. 21), IDRAK (No. 22), JHOROO CHOWKEEDAR (No. 23), DOWLUT SHUREEF (No. 24), KULLEEM CHOWKEEDAR (No. 25), BHELOYEE (No. 26), KULLOYEE (No. 27), LUSHIKUR CHOWKEEDAR (No. 28), APOO, ALIAS ALOOF (No. 29), AINOOLLAH (No. 30) AND BHYRUB CHUNDER SANDYAL (No. 31).

CRIME CHARGED.—1st count, riot with murder of Nusseerooddeen, servant of prosecutor's master, Tarnee Churn Raee, and wounding the prosecutor and Roatoolla; 2nd count, riot with culpable homicide of Nusseerooddeen, servant of prosecutor's master, Tarnee Churn Raee, and wounding the prosecutor and Roatoolla.

CRIME ESTABLISHED.—Riot, with culpable homicide of Nusseerooddeen, servant of prosecutor's master, Tarnee Churn Raee, and wounding the prosecutor and Roatoolla.

Committing Officer, Mr. W. M. Beaufort, *magistrate of Backergunge.

Tried before Mr. A. S. Annand, officiating sessions judge of Backergunge, on the 3rd August 1852.

Remarks by the officiating sessions judge.—“The prosecutor in this case, Kallee Mohun Mookhopadhyas, deposed that he lives at Ponabaleya, in thanna Nubchitty, and is a tusheeldar of Tarnee Churn Raee, a minor, one of the zemindars of the two annas share of pergunnah Horralee Salimabad. On the 20th Phagoon last, (2nd March,) he went, accompanied by certain servants of his own and the other zemindars to Adhakholah, to collect the rent due, and they put up there at the house of one Wadee, where they held cutcherry.

“Prosecutor was accompanied by Khoshaul Sein, Deenobundoo Sein, tushseeldars of the other zemindars of the two annas share, and by Nusseerooddeen, the mirdha, or head peada, Tumeezooddeen, Ashgur, Kalye, Aizooddeen, Loll Mahomed and Roatoolla, peadas, and Birjomohun and Sonatun Seel, who were servants. There being a large balance due from one Kalye, he was sent for, and on coming he said at first that Khaja Aleemeeah's people (who collect for him from the four annas share of the estate, which is his Aleemeeah's property,) had taken all that was due from him, but after some words he agreed to pay. It was then late in the evening, and Kalye had

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Case of HEDAYUTULLAH and others.

Conviction of riot with wilful murder quashed on appeal, in consequence of the gross improbabilities and discrepancies in the evidence.

1852.

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Case of
HEDAYUTOOL-
LAH and
others.

an attack of fever, which prevented his returning home that night and he remained in the cutcherry in consequence.

"On the same night Wadee, the owner of the house in which they were, said that the prisoner No. 31, Bhyrub Chunder Sandyal, a gomashta of Khaja Aleemeah, (who resides at Dacca,) had come with a great number of men from the Bhowanipore cutcherry to the cutcherry of the four annas proprietors at Adhakholah, but deponent did not then know for what purpose. The next morning (21st Phagoon, 3rd March,) about 6 o'clock, a drum was twice sounded in Aleemeah's cutcherry, and shortly after from one hundred and fifty to two hundred men came on from the west, north and south, armed with spears, *soolfees*, *nezas*, *lattees*, shields, &c., calling out *Alee, Alee*, and attacked the house in which deponent was. On this Tumeezooddeen, Nusseerooddeen and others went forward and asked prisoners why they were attacking them, and there was a pause, when the gomashta of Aleemeah called out from behind and ordered the prisoners to attack the prosecutor's men, which they did, wounded Nusseerooddeen with a *soolfee* and struck Tumeezooddeen repeatedly with a *lattee*. Tumeezooddeen retreated into one of the houses, and the rest of deponent's people ran off. Deponent was in the cutcherry when one of the prisoners came in and struck him with a *lattee*, and running away, another prisoner wounded him on the thigh with a *soolfee*. He got off, however, and went to the cutcherry of Kaleekishore Doss, and thence to the pharee, to give intelligence to the police, when in that cutcherry and from people whom he saw on his way to the pharee, deponent heard that Aleemeah's people had killed Nusseerooddeen. On arriving at the pharee the mohurir was absent, and he heard that the darogah, Ramchunder Mitter, had gone to Bhowanipore, on which he set off with Deenobundoo, who had come with him for that place, and arrived there about 12 o'clock in the day and told the darogah what had happened.

"The darogah would not take his *izhar* then, and a goat and other edibles coming from Aleemeah's cutcherry, they were prepared for him, the darogah's dinner, after which, about 4 o'clock, the deposition of the deponent was taken, and he was sent off to the place where the riot had happened, with four burkundauzes, to find the body of Nusseerooddeen and apprehend the prisoners. Saw Roatoolla at Adhakholah, who had a trifling wound on the loins. On the next day the darogah came, and putting deponent into a boat under charge of burkundauzes, went to the spot where the riot occurred and sent for him after about three hours had elapsed. Two days after the riot, Dowlut and another burkundauz seized Hedayutoollah, Uzzeem and Idarak, three of the prisoners, and bringing them to the darogah, they confessed that they had been in the riot, and had gone with others who had

carried off the body of Nusseerooddeen and hidden it in a bheel named Kowcallee. On this the mohurir of the thanna, Juggut Chunder, and deponent, the three prisoners and some others, went to the bheel, when the prisoners pointed out where the body was hidden, and it was taken out of the ground in *seven pieces*, which, on being laid together, made up the body of the deceased, Nusseerooddeen. The deponent on seeing the head and face at once recognized them as those of Nusseerooddeen. When the case had arrived at this stage the master of the prosecutor gave a petition to the magistrate to the effect that the darogah, who was then investigating the case, was doing his best for the prisoners, who were rich and powerful, and begged that it might be transferred to some other, which was done; and Sheelnath Ghose, a first class darogah, was ordered to go on with and complete the inquiry.

"The cutcherry of Aleemeah at Adhakholah is about one hundred or one hundred and fifty *haths* distant from Wadee's house, where deponent and his people were. Believes that the riot arose from the desire of Aleemeah to add the two anna share to the four anna share of the estate which he had previously purchased, and he thinks that he will be able to do this if he can prevent deponent's master from collecting his rents; he therefore tried to get Kalye away, when he was called upon by deponent to pay the balance due by him. When deponent was flying from the rioters, he saw that they had wounded Nusseerooddeen on the breast and legs. He was about thirty-five years of age, in good health and has left a wife, one son and a daughter. Kowcallee bheel, where the body of Nusseerooddeen was found, is two *ghurries* distant from the Adhakholah cutcherry. *Recognizes and identifies all the prisoners, from 20 to 30, inclusive, as having been present and aiding and abetting in the riot; did not know or see the leader Bhyrub Chunder Sandyal (No. 31), but heard from others that he was present. Tumeezooddeen has not been seen since the attack took place; and it is supposed that he was gone to his house in Furreedpore.*

Prisoner Hedayutoollah (No. 20) confessed at the thanna and before the magistrate that he was a peada of Aleemeah's, and that the people of the two anna share came armed to Adhakholah and seized Kalye for rent; that his master's gomashtha, Chunder Mohun Sein, then collected a hundred men to oppose them, and on the next day they went armed to their cutcherry, when they came out to defend themselves and the fight began, in which he heard that one man was killed; that a short time after, Shumshere Sickdar, Mungle Jemadar and others, brought a dead body to the cutcherry of the four annas share, where prisoners had retreated after the affray, and carried it away towards the west, when prisoner accompanied them to Kowcallee. There some

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of them took the body into the house of Baburullah, whence three of them came out shortly afterwards, with as many bundles upon their heads. Prisoner went on with them, and getting into the jungle, they put down the bundles, when he saw that they were formed of pieces of some one's body. They then dug a hole, and buried them there, and prisoner ran away to Angariya, where he was seized by a thanna burkundauz, and pointed out the place where the body was hidden. Recognized the body as that of Nusseerooddeen, a servant of the two anna zemindars, and states, that two other men were wounded on that side, but no one on his, that is, on Aleemeah's side. In the sessions court he denies his guilt and says he is a servant of the two anna zemindars.

"Prisoner Uzzeem (No. 21) and Idrak (No. 22) confessed at the thanna and before the magistrate, that they were in the fight, but ran away shortly after it began; that they heard that one of the men on the side of the two anna sharers had been killed, and that they absconded in consequence, but were taken by a thanna burkundauz. Had heard that the name of the man killed was Nusseerooddeen, a servant of the two anna zemindars. Both denied participation in the crimes with which they were charged in my court. The prisoners Jhoroo chowkeedar (No. 23), Dowlut Shureef (No. 24), Kulleem chowkeedar (No. 25), Bhelayee (No. 26), Kulloye (No. 27), Lushkur chowkeedar (No. 28), Apoo (No. 29), Aindollah (No. 30), all deny all knowledge of the charge at the thanna, before the magistrate and in my court. Prisoner Bhyrnb Chunder Sandyal (No. 31), the tuhseeldar and head man of Aleemeah, says at the thanna and before the magistrate and in this court, that he lives in the cutcherry at Blowanipore, four *ghurries* distant from Adhakholah, where the riot took place; that Ram Chunder Mitter, the darogah, who commenced the inquiry, and his mohurir, saw him there at 12 o'clock on the night of the 20th Phagoon, that is the day before the riot, and that the same darogah and mohurir saw him again about 6 in the morning, at the same place, on the next day; so that he could not possibly have been at Adhakholah when Wadee's house was attacked and Nusseerooddeen killed.

"The first witness, Sheikh Omed Alee, deposes, that he lives close to Wadee in Adhakholah, and is a ryot of Gour Chunder Majmoodar; that in the latter part of Phagoon he saw one hundred and fifty, or one hundred and seventy men, armed with *soolfees*, *lattees* and spears, and belonging to the four anna zemindars, come up to the cutcherry of the two anna sharer, and on their coming out they attacked them. Heard that one man, named Nusseerooddeen, had been killed, and Rontoolla wounded. Saw the attack from a distance of two beegahs. The riot was caused by the two anna sharers having brought a ryot of theirs named Kalye, to their cutcherry to make him pay his rent, the same man being what is called a *dilassah* ryot of Aleemeah's (that is, one whom he

had taken under his protection and would not suffer to be seized or injured by any other person). His people wished to rescue him from the two anna sharers, in whose cutcherry he was. Saw and recognised the body of Nusseerooddeen after it had been found in seven pieces in a bheel at Kowcallee. Recognises and identifies here and before the magistrate, prisoners Nos. 20, 21, 22, 23, 24, 25, 26, 27, 28, 29 and 31, as present and aiding and abetting in the attack. Says that No. 31, Bhyrub Chunder Sandyal, was the leader of the gang. All the prisoners are *ryots* or servants of the four anna zemindars. A great many other witnesses, amongst whom is Kalye, corroborate the evidence of the prosecutor, and recognise and identify every one of the prisoners as parties to the attack, both in my court and in the magistrate's, with a few discrepancies as to names which do not, in my opinion, invalidate the general credibility of their evidence. *Almost all depose to having seen Bhyrub Chunder Sandyal (No. 31), and that he acted as a leader, being Aleemeah's chief servant, and that they believe that the attack was ordered and carried out by him.* Four of the witnesses had been bought over since they gave their evidence before the magistrate, and contradicted all that they had said in that court; in consequence of which I was compelled to direct the magistrate to commit them to be tried for perjury. The civil assistant surgeon states that he examined the body said to have been that of Nusseerooddeen, which was divided into seven portions: the head and part of the chest formed one piece, the remainder of the chest a second, the trunk was divided into two parts, and the legs and thighs into three parts,—all, when he saw them, in a very advanced stage of decomposition. He thinks that the man had been dead seven or eight days before he saw the body, and was unable to discover any wound in consequence. It was not recognisable when he saw it; but he should say that in all probability it could be recognised if taken out of the earth as it had been two days after death. The prisoners could urge nothing at all satisfactory in their defence. One of them attempted to show that he was ill at the time; the others defended upon *alibis* with their usual success. Ram Chunder Mitter, the darogah, who commenced the inquiry, and appears to have done all he could for the prisoners, deposed that on the 20th Phagoon last he was at Bhowanipore, and that he saw the prisoner Bhyrub Chunder Sandyal (No. 31), there on the evening of that day, and on the next morning he came to his house about 8 A. M., or a little before. Did not know why he came there. He came for a moment and went away again. Thought afterwards that the prisoner had done so to save himself in this case. He might have been to Adhakholah, and have returned between the time witness saw him at night and his appearance again in the evening. Thinks

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it impossible that the riot could have taken place without his instructions, as he is the chief man, and all are under his orders. Cannot say exactly when he saw defendant in the morning; may be two or three *ghuntas* out, as to the exact time. Knows that Bhyrub Chunder Sandyal is a notorious *dungabauz*, and that he has been imprisoned several times before in like cases.

"The mohurir corroborates the above: saw prisoner at the darogah's, at 10 at night on the 19th or 20th Phagoon, and next morning about 9 o'clock, in the same place. Adhakholah is one *puhur* (4 hours) distant from Bhowanipore. Saw prisoner about 9 o'clock, it may have been later; cannot say exactly.

"It is quite possible, believing this evidence, that Bhyrub Chunder Sandyal may have been present at the attack on Wadee's house and at Bhowanipore again, at the time he is said to have been seen there. The natives are not accurate in their estimate of time, and an hour more or less would enable the prisoner to arrive from Adhakholah after having been present when the riot took place. I must remark also that the darogah who was sent to supersede Ram Chunder Mitter, has stated that the latter told him that he had seen Bhyrub Chunder Sandyal on the day of the riot at Bhowanipore at 10 or $\frac{1}{2}$ past 10 A. M., which would have given him plenty of time to get there after the attack upon the cutcherry had been made.

"I have gone carefully over the thanna evidence, and am well aware of the many discrepancies that exist between it and the evidence given in the magistrate's court and my own; but in a serious and complicated case of this kind, where one of the parties is a zemindar of immense wealth and influence, I place very little confidence in the Mofussil inquiry, and only so far as the subsequent evidence corroborates it. Every case of this description is followed up by the darogah, with the view of doing the best he can for the party who can pay him best; and I would submit that as we never knew what the prosecutor and his witnesses have really said in the Mofussil, we must depend almost entirely for our convictions upon the evidence taken in the magistrate's court and at the sessions, where both parties are subjected to a rigid cross-examination by the authorities who preside, by the jury, and by the vakeels of both parties. Judged by that, the evidence in this case will be found almost as strong as it can possibly be against all the prisoners; the chief of whom, Bhyrub Chunder Sandyal (No. 31), is one of the most notorious offenders in this zillah, and the terror of the neighbourhood in which he resides. The jury convicted all the prisoners of the crime entered in column 10; and, fully concurring in the verdict, I sentenced them accordingly."

Sentence passed by the lower court.—Nos. 20 to 30, six (6) years' imprisonment, with labor in irons, and No. 31, seven (7) years' imprisonment, with labor in irons.

Remarks by the Nizamut Adawlut.—(Present: Mr. R. H. Mytton).—"Mr. Norris has appeared for the appellants, and Baboo Sumboonath Pundit, on the part of Government.

"The first point to look to in the case is the ground on which the prisoners were apprehended. Only one of their names (that of Dowlut,) appears amongst those charged with the outrage by the person who laid the information at the thanna on the 3rd of March. The statement then made was that Clundermohun Sein, gomashta and others, in the employ of Aleemeah, attacked the house of Wadee, but at that time deserted by him, where the officers of Gopalkissen Roy, another partner in the estate, had detained a favoured ryot of Aleemeah.

"The darogah who commenced the inquiry was not the same person who completed it, but from beginning to end no new features in the case were elicited, nothing to show that the first information was incorrect.

"On the 5th March the darogah reports the capture of the three first prisoners in the calendar (Hedayut, Uzzeem and Idrak,) his statement is that two burkundauzes deputed to arrest those accused by the informant, saw Hedayut running away and Uzzeem and Idrak concealing themselves, and therefore took them up, the two last with articles of plunder which Wadee claims as taken from him on a former occasion of his house being plundered. These two burkundauzes on the trial told quite a different story, viz., that Hedayutoollah's name was included in their warrant, and that Wadee pointed out all three. These prisoners are said to have confessed at the thanna and in the magistrate's court, but the circumstances attending their capture are so suspicious, that no reliance can be placed on them. Many witnesses on the trial say, that they are the ryots of Gopalkissen Roy; it is asserted that Hedayut is a relation of Wadee, and it comes out in the evidence of Mohun Chunder Bose that all three of these prisoners were with the darogah, when on his first arrival he made a map of the spot.

"One of the witnesses to the confessions, Jenabuddeen, states, that they were in charge of the prosecutor the night before they recorded their statements. These circumstances tend to a belief, that these prisoners have been impressed with the idea that they were to appear as witnesses, and that they were dependants of Gopalkissen Roy, put forward, tutored and victimized to serve his ends.

"It is on their statements that Bheloyee, Kulloyee and Apoo were apprehended. It was not till the 10th of March, i. e., a week after the occurrence, that any one implicated Bhyrub Chunder Sandyal, although from the darogah's deposition it appears that he was present at the inquiry, and when the so-called confessions were taken.

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"On the 10th, the above-named Wadee named him. This is the man whose house had been attacked, and who, if present at the attack, would naturally have been the first person to be examined, and who from the burkundauz's depositions had evidently been busying himself in the case. Jhoroo chowkeedar was apprehended, because he had some blood on his clothes.

"The remaining two prisoners, Lushkur and Ainoollah, were not named till the 9th March, nevertheless they appear in the calendar as apprehended two days previously.

"The grounds of arrest are, therefore, extremely unsatisfactory and suspicious. It remains now to be seen whether the evidence adduced is such as to compensate by its trustworthiness for the above radical defect. The sessions judge expresses want of confidence in anything recorded before the darogah, and attaches no importance therefore to a comparison of the statements recorded as made by witnesses in the Mofussil, with subsequent versions. There is no symptom of the police officers having favoured Aleemeah's side in this case; on the contrary, his party have from first to last been represented as alone in fault. Mr. Norris has put in a tabular statement, showing the number of persons said to have been recognized by the prosecutor and witnesses in their Mofussil and foudaree depositions. The correctness of this statement is not impugned by the Government pleader. A copy* of it is given below. A glance at it shows that the prosecutor and witnesses have, almost without any exception, been guilty of the grossest discrepancy on the vital point of recognition. Men, such as the prosecutor and Deenobundoo, who being of the gomashita class and understanding business, would not have put their hand to statements in the Mofussil, containing important omissions of what they had deposed to, these persons have to the police stated that they recognized only eleven and sixteen, but in the foudaree deposed to recognizing forty-one and sixty-eight persons respectively? But this is nothing to what some of the other witnesses have done—

Usgur has advanced from	43 to 109
Saleem, from	40 to 112
Akbur, from	35 to 104
Kanaye, from	30 to 107

"The Government pleader could not point to the evidence of one witness who had been consistent throughout. But apart from comparison it is highly improbable that in a riot such as this is described to have been, any person looking on, *a fortiori* any one attacked, could recognize more than ten or fifteen men at most, and it is utterly incredible that they should be able to identify, and subsequently name, fifty or a hundred of the rioters.

* See Tabular Statement, page 531.

The grounds of apprehension are so suspicious, and the evidence in this case on the point of recognition is so extravagant, and so inconsistent, that it is a matter of surprise that the magistrate should even have made a committal on it.

"The conviction must be quashed; all the prisoners will be released."

"It is hoped that the court will not again have to notice such great want of discrimination as to the credibility of evidence and probabilities, which this trial and conviction evinces on the part of Mr. Annand."

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Names of Prosecutor and Witnesses.	At the Thanna.		Before the Magistrate.				No. of days after occurrence when first examined.
	1.	2.	3.	4.	5.	6.	
	No. mentioned.	No. identified.	No. of names men- tioned.	No. identified.	No. of names men- tioned at Thanna but not here.	No. of names add- ed.	
Kallee Mohun,	11	1	41	11	3	33
1. Omed Alee,	25	5	52	11	8	35	13 days.*
2. Rahoollah,	17	0	50	10	4	37	3 ditto.*
3. Munurer,	13	3	58	10	3	48	12 ditto.*
4. Saleem,	40	12	112	12	8	80	10 ditto.*
5. Aruzdee,	10	4	45	2	3	38	10 ditto.
6. Usghur,	43	9	109	10	3	76	12 ditto.
7. Sibchunder Mistree, ...	4	3	19	4	1	16	8 ditto.
8. Sheebook, ..	7	3	27	6	1	21	8 ditto.
9. Kodrutoollah,	11	2	17	4	2	8	13 ditto.
10. Kumrooddeen,	11	0	17	1	2	8	14 ditto.
11. Wadee,	31	12	71	12	2	42	7 ditto.*
12. Deenobundoo,	16	1	68	6	8	68
13. Oosman,	28	1	54	2	4	30	14 days.
14. Shureentoollah,	18	1	23	2	3	15	14 ditto.
15. Muneeram,	21	2	31	1	4	17	14 ditto.
16. Akbur, ..	35	0	104	10	6	75	14 ditto.*
17. Kaynae,	30	0	187	10	8	85	10 ditto.
18. Khoshaul Chunder, ...	2	0	3	1	2	1	8 ditto.
19. Nubboo Dhobey,	15	10	25	9	3	13	10 ditto.

* Subtract item in column 6 from column 1, and add the balance to column 3, this will give the total in column 3.

PRESENT :

R. H. MYTTON, Esq., *Officiating Judge.*

ATTARAM MALEE

*versus*BHUGBUT DASS OOREEAH (No. 1), ROOPCHAND BY-
RAGEE (No. 2) AND ROOPCHAND DALAL (No. 3).

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Case of
BHUGBUT
DASS OOREE-
AH and others.Burglary
and theft of
property
above rupees
three hundred
in value.
Sentence,
seven years'
imprisonment
and a fine of
rupees twenty
under Act
XVI. of 1850,
confirmed.

CRIME CHARGED.—1st count, Nos. 1 to 3, burglary in pro-
secutor's house and theft of property valued at about rupees
400 ; and 2nd count, Nos. 2 and 3, accessaries to the above
crime, both before and after its perpetration.

CRIME ESTABLISHED.—No. 1, burglary and theft of property
valued by the prosecutor at about rupees 400 ; No. 2 of being an
accessary before and after the crime, and No. 3 of being an
accessary after the crime.

Committing Officer, Mr. E. A. Samuells, magistrate of 24-Per-
gunnahs.

Tried before Mr. E. Bentall, additional sessions judge of
24-Pergunnahs, on the 27th July 1852.

Remarks by the additional sessions judge —“ The prosecutor
lives in a house at Kalyghat, and on the 31st of January at 7
A. M., he went to the bazar and left the door of his house locked,
when he came back he found the house had been broken into,
and he had been robbed. He gave notice to the police, and the
prisoner No. 2, who lives opposite to him and has been in the
Calcutta jail for stealing, was apprehended on suspicion on the
3rd February, and the next day he confessed before the police
and accused the other prisoner. On the 5th of February he
confessed before the magistrate. Each time he confessed to
having been on accessary before and after the crime. He gave
information to the robbers before the crime took place, and he
received rupees 10, which were a part of the stolen property ; but
before the magistrate he said he received it only as a loan, know-
ing it had been stolen. The prisoner No. 1 lives in Calcutta. He
was apprehended on the 4th of February and confessed to the
burglary and theft on the 5th of February before the police and
on the same day before the magistrate ; he has been six months in
jail before. The prisoner No. 3 lives in Calcutta. He was appre-
hended on the 4th of February, and on the 6th of February he con-
fessed before the police and before the deputy magistrate that he
was aware that some secret plan was talked over in his house and
he allowed the spoil to be divided at his house, and he received
rupees 9-12, a part of the stolen property, knowing it to have been
stolen, but only in payment of a debt due to him on another
account. I convict him of being accessary after the fact. He

has been two years in jail in Calcutta. There is every reason to suppose that the prisoners are a part of a gang, and a severe punishment is expedient."

Sentence passed by the lower court.—Each, seven (7) years' imprisonment, with labor and irons, and a fine of rupees twenty (20) under Act XVI. of 1850.

Remarks by the Nizamut Adawlut.—(Present: Mr. R. H. Mytton).—"The prisoners have appealed, impugning the proceedings of the police officer employed to investigate the case. Their pleas are wholly unsupported by the record and are rejected."

PRESENT:

R. H. MYTTON, Esq., *Officiating Judge.*

MODHOOSOODUN BAGDEE

versus

GOBERAH SHEIKH.

* CRIME CHARGED.—Culpable homicide of prosecutor's father, Ram Chand Bagdee.

CRIME ESTABLISHED.—Culpable homicide.

Committing Officer, Mr. E. A. Samuells, magistrate of 24-Pergunnahs.

Tried before Mr. E. Bentall, additional sessions judge of 24-Pergunnahs, on the 22nd July, 1852.

Remarks by the additional sessions judge.—"The prisoner is a servant of Chuander Chowdry, a gomashita, who has charge of an indigo factory at Kurna. On the 31st of March, the prisoner was employed to look after the growing crop of indigo, and having found some cattle belonging to the prosecutor and others trespassing on some indigo fields in the village of Singhur Barasia, he chased them into their own village of Symona, and was thence taking them off to the factory, having refused four pice to let them go. The father of the prosecutor followed him for half a mile and then tried to stop his bullocks, but received two blows of a bamboo from the prisoner, one of which struck him on the left temple and caused an injury, which, in the opinion of the civil surgeon, who examined the body, was sufficient to cause death. The bamboo, which was produced in court as the instrument with which the blow was struck, is only seventeen and half rupees in weight, and is three and half feet long, and is by no means a weapon that one would suppose a person had been killed with. There are two women, daughters of the deceased man,

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Case of
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DASS OORRE-
AH and others.

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SHEIKH.

Culpable
homicide.
Sentence, five
years' im-
prisonment, con-
firmed.

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SHEIKH.

who state that they saw the blows struck ; and there is no reason to doubt their evidence, as the prisoner allowed in his confession that they followed him. He was apprehended before the arrival of the thanna police, and confessed on the 1st of April before the darogah and the next day before the deputy magistrate at Allipore. I therefore find him guilty of the crime with which he is charged. In awarding punishment to the prisoner I took into consideration, *first*, the great provocation in letting bullocks trespass on the crops of neighbouring villages ; *secondly*, the illegal act of seizing the cattle when they had been driven to their own homes, and the great probability of an affray in consequence of it ; *thirdly*, the ignorance of the prisoner in supposing that it was his duty to carry off the cattle in obedience to the order of his master, who would exact a fine for each head of them ; and *fourthly*, the lightness of the stick with which the prisoner was armed and with which he struck the deceased man."

Sentence passed by the lower court.—Five (5) years' imprisonment, with labor.

Remarks by the Nizamut Adawlut.—(Present: Mr. R. H. Mytton).—"The prisoner appeals, asserting that the deceased fell in an epileptic fit on the stubble of indigo and thereby met his death.

"The evidence of the surgeon and the prisoner's previous confessions belie this statement. The appeal is rejected."

PRESENT:

SIR R. BARLOW, BART., *Judge.*

GOVERNMENT

versus

RAMSOONDUR DUTT (No. 21), NOBINCHUNDER MOONSHÉE (No. 22), KISHEN LOLT BUNDOPADHEA (No. 23), FURHATOOLLAH SHEIKH (No. 24), KUDDUM GHURAMEE (No. 25), BUDDUN SHEIKH (No. 26), SELIM SHEIKH (No. 27), BOODHYE SHEIKH (No. 28), AZEEM SHEIKH (No. 29), SELIM SHEIKH 2ND, (No. 30), BHADOO SHEIKH (No. 31), ARZAN SHEIKH (No. 32), SOROOP SHEIKH (No. 33), USSEEMOODDIN SHEIKH (No. 34) AND MADHOO SHEIKH (No. 10).

CRIME CHARGED.—Nos. 21 to 34, and 10, being armed, and riotously attacking and plundering the houses of *ryots* of Ryepore and Comurbaug of property, valued at about 1,600 rupees, in the presence of, and while resisting the authority of the police.

CRIME ESTABLISHED.—Nos. 21 to 23, riot, and ordering the houses of *ryots* of Ryepore and Comurbaug to be plundered in the presence of the police, and Nos. 24 to 34 and 10, riot, and plundering the houses of *ryots* of Ryepore and Comurbaug.

Committing Officer, Mr. J. J. Ward, joint magistrate of Pubna, Rajshahye.

Tried before Mr. G. C. Cheap, sessions judge of Rajshahye, on the 6th April 1852.

Remarks by the sessions judge.—“This was a very heavy case, one hundred and seventeen witnesses being named in the two calendars, and the trial occupying more than four days. The outrage originated in a forcible attempt to *oust* a person from his farm, in a joint undivided estate, on the plea that the lessors had no share whatever, all that belonged to the family having been sold at a sheriff's sale, and purchased by Mr. Kenny (I believe), of the Salgurmudooa indigo concern, and who again had leased his share or interest in the villages, to the Hazleebut concern, belonging to Mr. Deverinne. From demonstrations for some days previous, the darogah was led to apprehend there would be a breach of the peace, and on his reporting to this effect to the joint magistrate, the only orders the latter issued were to prevent a *dangah*, and if there was one, to send in the parties proved to have been concerned. No orders were issued warning the owners of the respective factories of Hazleebut and Salgurmudooa, under the charge of Messrs. Barton and Tripp, or to their head people. The consequence was, that though the mohurir of Cuxsa

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The case of the prisoner, which was postponed for evidence in support of his defence, decided by affirming the conviction but modifying the sentence so as to make it legal.

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was on the spot, a large body of some thirty coolies and *gura-meas*, carrying *chuppers*, and the materials to erect a cutcherry, backed by about one hundred *latteals*, armed in the usual way, came to the village of Ryepore, when twenty men on the part of the farmer (a dependant of Ram Ruttun Baboo) immediately left it. In the meantime, the *mohurir* wrote to the darogah, informing him of what was going on. The latter then proceeded to the spot, and tried to persuade the prisoners Nos. 21 and 23 to desist, but they would not listen to him. Shortly after No. 22 arrived on an elephant, and, on his saluting the darogah, was asked to interfere, when he replied (laughing) 'what could he do, the orders had been issued by Khetter Mohun Baboo.' In short, the rioters, after thus setting the police totally at defiance, (and who were helpless from the numbers opposed to them,) separated, and began plundering the houses of the *ryots* in Ryepore and Comurbaug. The women in a body had previously fled to the river. The darogah wanted to give evidence himself of their being maltreated, and also to question others on the subject; but as this did not form a part of the charge, I would not allow the evidence to be recorded. There is, however, ample evidence to bring home the other charges to the prisoners. Against Nos. 21 and 23, as principals in the first degree. No. 21, on the part of Mr. Tripp, of Salgurmudoon factory, and No. 23, of the Hazleebut factory, close by, and within sight of the villages where the outrage was committed, and the *ryots* of which were, in fact, Mr. Barton's *ryots*, and instead of being protected, were thus wantonly ill-treated by the farmer's head servants. No. 22 seems not to have arrived at first, or with the others, but that he was present, aiding and abetting in the outrages committed on the *ryots*, there can be no doubt whatever; and he apparently had some spite of his own to pay off or gratify, from the way he seems to have enjoyed the triumph obtained over Ram Ruttun and his servant, the farmer of the villages. The other twelve prisoners all reside at Omurpore, a village belonging to the trustees of Dwarkanauth Tagore (also purchased at a sheriff's sale as the right of Situl Ghose), close adjoining to Ryepore and Comurbaug; and, being neighbours, should have been the last persons to have joined in the commission of such an outrage, but the hope of plunder, or pay, will induce men to do many things. Doubtless they had their reward, and now have got their punishment. With the exception of No. 10, (Madhoo Sheikh) not one of the party arrested is a *latteal*. He was the only prisoner who set up any regular defence (an *alibi*), but which the moulvee rejected, and so did I, as he was named throughout by the police. Had the joint magistrate only proceeded to the spot *before* the commission of the outrage, instead of *after* it, none would have occurred. The darogah was not well-supported, and when things

came to extremities, seems to have been quite paralyzed by the conduct of the factory people, and could not even report what had occurred. The report, (a very fair one in my opinion, tallying with the darogah's evidence,) at the instance of Messrs. Barton and Tripp, was made by the darogah of Coxa, and the foudaree nazir; from which I gather that of the parties whose houses had been plundered of all worth taking away, thirty-four had complained, and ten had run away and left the place, a common occurrence when such gross outrages are committed by Europeans, or by their servants. The evidence for the prosecution consists of three different parties, totally unconnected with each other, but whose statements tally, or agree as to the main facts—*first*, the police, including the darogah and mohurir of thanna Coxa; *secondly*, several women, mostly widows, or *bustomees*, residing in the villages, and who, of course, had nothing to do with the factory; *thirdly*, the *ryots*, or inhabitants of the houses plundered. The whole of these were not examined, only such as appeared respectable, and therefore least likely to exaggerate or depose falsely against the factory, out of revenge or grudge for some previous maltreatment, and the few questions put to these witnesses by the prisoners Nos. 21, 22 and 23 of itself shows they could not repel the evidence against them. Concurring, therefore, entirely with the moulvee in his *futwa*, who declares the three first prisoners principals, and punishable by *akoobut*, and the others, as accomplices, by *tazeer*, I have accordingly sentenced them as stated in the preceding column.

"After the *futwa* was given in, I went through the whole of the foudaree proceedings, or record connected with the case. The only excuse for Mr. Barton is, that he was not in his factory at the time; but what extraordinary powers had been left in the hands of his head people, or were exercised by them in this case! With regard to Mr. Tripp, as Mr. Barton's lease did not expire till the end of the Bengalee year, his interference, before the farm reverted to his employer (Mr. Kenny) was wholly unwarranted and manifestly illegal, and I doubt if Mr. Kenny himself would have thus set at defiance the authority of the police had he been at the factory. I was informed he had either then left, or was leaving, the country, and was, therefore, ignorant of Mr. Tripp's proceedings. I regret much to have to record such misconduct on the part of Europeans and British subjects; but, *fiat justitia ruat cælum*."

Sentence passed by the lower court.—Nos. 21 and 23, each five (5) years' imprisonment, without labor, and a fine of rupees two hundred and fifty (250), or to further imprisonment for two (2) years; No. 22, three (3) years' imprisonment, without labor, and a fine of rupees one hundred and fifty (150), or, in default, to further imprisonment for one (1) year, and Nos. 24 to 34

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and 10, each, three (3) years' imprisonment, without irons, and a fine of rupees one hundred (100), or labor.

Remarks by the Nizamut Adawlut.—(Present: Sir R. Barlow, Bart.)—"The other prisoners connected with this case were sentenced on the 6th August last.

"The sessions judge had omitted to take the evidence of the witnesses cited by the prisoner No. 21 in the calendar: he was directed to supply the omission.

"Having considered the evidence now offered, I can place no reliance on it. The prisoner was at Hazleebut, and went to Ryepore, where he says he was engaged taking some accounts, though some of the witnesses for the defence say he was *not* on the spot, but at Hazleebut; others have said he *was* at Ryepore and engaged as he described, *i. e.*, Buddinath, Ballaie and Baroa Sheikh state this; but their depositions are directly at variance with not only the evidence for the prosecution, which establishes, by the depositions of several witnesses, that the prisoner was taking an active part in the affair, but also with the depositions of the prisoners' own witnesses.

"I have already, in the judgment passed on the other prisoners, modified the sessions judge's sentence upon them for the reasons therein recorded. The sentence upon this prisoner must similarly be reduced. I remit so much of that sentence as awards fine, and in default of payment a further period of imprisonment. The remainder of the sentence, five (5) years' imprisonment, without labor, is upheld."

PRESENT :

W. B. JACKSON, Esq., Judge.

A. J. M. MILLS, }
AND } Esqrs., Officiating Judges.
R. H. MYTTON, } *

MUSST. JOBEE BEWAH, MUSST. FURMANEE AND
GOVERNMENT.

versus

SHEIKH DOLLEE (No. 1), SHEIKH ANOOAH (No. 2)
AND SHEIKH DILLOO (No. 3.)

1852.

CRIME CHARGED.—No. 1, wilful murder of Sheikh Shanoo, and Nos. 2 and 3, 1st count, being accomplices in the above murder, and 2nd count, accessaries before and after the fact of the above murder.

Committing Officer, Mr. R. Alexander, officiating magistrate of Mymensing.

Tried before Mr. R. E. Cunliffe, sessions judge of Mymensing, on the 6th August 1852.

Remarks by the sessions judge.—“I proceed with the trial of the prisoners Nos. 1 and 2, as it appears from the letter of of the Civil Surgeon, copy of which is attached to the *nuthee*, that No. 3 was so ill that his recovery was doubtful, and at all events, would not be able to stand his trial for one or two months.

“From the evidence of the prosecutrix Jobee, (for the other prosecutrix Furmanee, deceased's widow, is a child, whose evidence was not taken,) and witnesses, it appears that the deceased had for some time been living in the second *baree* of No. 1's father, and No. 2's master, Phalloo Mundul. That prosecutrix, about the 8th of Jeyt, went to see the deceased, her son, and on the night in question she and Furmanee slept in one house, and the deceased and witness No. 14 in another, and about one *pukur* of the night remaining, witness No. 14 asked if her son had come to her house, to which she replied he had not, and that in the evening she had called him to come and sleep in her house; that she went to the other *baree*, and calling for her son, prisoners Nos. 1 and 2 came and told her to search for him, and did so without effect, but seeing the cloth (produced in court) spread over a piece of wood near the cow-house, and thinking her son was under it, laid hold of it and found blood on it, on which she began to call out and the neighbours came and searched but could not find him, and that she gave the cloth to the chowkeedar, and that No. 1

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der, what con-
stitutes an
aider and
abettor con-
sidered. Sen-
tence of death
on principal.

Ditto trans-
portation for
life on aider
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found the *dāo** near the cow-house, and said there was blood on it, when the chowkeedar took it from him; and that she was not aware that her son had enmity or intrigue with any one. There was some difficulty in getting explicit answers to some of the questions put to the prosecutrix from, in my opinion, partly stupidity and partly from grief and anger.

"As there were few witnesses to the circumstances, and finding that the witnesses to the *sooruthal* were neighbours of the prisoners, I questioned them on their knowledge of the general circumstances of the case, and they, it appears, were early next day shown the *dāo* by the chowkeedar with blood on it, and on the ground near the cow-house as well as on the cloth.

"It is unnecessary to detail the evidence of the witness No. 12, as from the gross discrepancies between that given in this court and in the *foujdaree*, it is unworthy of confidence, and there is reason to believe, from the confessions of the prisoners, he was the instigator and an accomplice in the deed, and from the deposition of witness No. 16, it is evident he entertained ill-will towards the deceased.

"The next witness is No. 14, prisoner No. 1's aunt, and therefore it is not singular that there should be a variation in her evidence in this court as compared with that given in the *foujdaree*, since which prisoner No. 1's father has been released. In the *foujdaree* she said Nos. 1, 2 and 3 came at one and half *puhurs* of the night and told deceased his mother was ill and that he went with them, and afterwards, not finding him on the mat, called to his mother, who came and knew nothing about him, and called witness No. 13 and others, who searched for him without success, but found the cloth and *dāo* with blood on them. This, being ill, she heard from inside (she is a very old woman, and so toothless that it was difficult to hear what she said) and next morning saw them; that deceased had had an intrigue with No. 1's mother for a year, and on being asked why she had not said so at the *thanna*, *viz.*, that the prisoners had called the deceased, she said she had said so. All this she denied in this court, and said deceased had left the place he was sleeping on, but not why; and that his mother called out and said who has killed my son, but being ill she lay down. Admitted that the villagers came and searched for deceased and recognized the body found in Julloa Fuqeer's well, as his. The well is about one hundred *baths* from No. 1's house.

"Witness No. 15, mother of deceased's young wife, said in this court that at one and half *puhurs* of the night she had seen Nos. 1, 2 and 3, and Phalloo and Nega leaving the *baree*, when she

* The *dāo* weighing 32 tolahs with the handle.

went to sleep, and does not know when they returned; but at four *dunds* of the night remaining, saw them smoking; that the prosecutrix asked about her son, and a search was made but saw nothing found or blood anywhere, nor was aware of any enmity or intrigue. In the foudaree she further said she saw early in the morning the deceased's cloth and *dāo* with blood on them, (of which the cloth retains the stains in various places,) and that deceased had an intrigue with No. 1's mother for two years.

"The last witness is the chowkeedar, who states that he lives two *ghurrees* distance from the prisoners, and that No. 1, witness No. 13 and another, came to his house at the very break of day and told him the deceased was missing. This, however, is contrary to what he reported at the thanna, which was that the deceased's mother had come to him about 12 P. M., saying her son was missing, which is much more probable: he also said the deceased had an intrigue with one Felooke, while here he denied any knowledge of an intrigue; that he went to the prisoner's house and on searching found blood on three places near the cow-house, where also the *dāo* was found, and also saw the marks of many feet going towards the east, in which direction, I should have stated, one of the witnesses to the *sooruthal* saw blood under a guava tree. In the foudaree he also mentioned the finding of the cloth.

"The darogah very negligently did not go to the spot immediately he had received the chowkeedar's report; but first sent a burkundauz and went two days after, and arrived at the spot on the 29th May, and commenced a search for the body, which was found on the 31st in the well, a quantity of flies being observed over it. The prisoners were then apprehended and confessed. No. 1, Sheikh Dollee admitted having cut the deceased's throat, being told by witness No. 13, that deceased had an intrigue with his mother, and instigated him to do the deed; so at one and half *puhrs* of the night, he, No. 2 and No. 3, being joined by witness No. 13, went and stood near the *buree*, and No. 3 went and called deceased, bringing with him this *dāo*, and on deceased coming, witness No. 13, Nos. 2 and 3 seized him and threw him down, and prisoner cut his throat with the *dāo* before the door; that they took and put the body down under the guava tree and afterwards threw him into the well and forgot the *dāo* and cloth. No. 2, Sheikh Anooah, denied having killed the deceased, and said his masters, Nos. 1 and 3, called him, and on going to them saw them, and Nega and Phalloo Mündul, and went off with them, and on the road No. 3 told him they were going to kill deceased, to which he objected and was threatened and taken by force; that No. 3, Phalloo and Nega, stood near the cow-house, and he under a plantain tree, and No. 1 went and called deceased to come and see his mother, who was ill. He

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came, and No. 1 bringing this *dão*, and on coming before the cow-house he heard a sound of wrestling, and going to the corner of the cow-house saw deceased on the ground, and No. 3 on his breast, and Phalloo and Nega also holding him, and No. 1 with his left hand put a cloth over his mouth and with his right cut his throat; on which he ran away to a short distance, and the others took the body to the guava tree and put it down; that he was afterwards brought by No. 3 to the body, and made to assist him in carrying it; that No. 1 proposing to bury it, Phalloo said the jackalls would dig it up and proposed throwing it into a *khal*, and as they went to the south, he ran away and went to Phalloo's house, and that the cause for the murder was the intrigue with No. 1's mother. Before the officiating magistrate, No. 1 admitted having cut the deceased's throat with the *dão* on account of an intrigue with his mother, and that Nos. 2, 3 and witness No. 12 were with him. No. 2, as in the Mofussil, said he was called by Nos. 1 and 3, and others, and taken to the place where deceased was, who was brought out on some pretence, and his throat cut by No. 1; that he did not from fear lay hold of the deceased, but saw the deed done at a distance of three or four *haths*, for which he ascribed the same reason, and ran away when they had brought the body near Julloa Fugger's *baree*. Before this court No. 1 denied having killed the deceased or knowing anything about it; that the darogah apprehended him unjustly, and that he was at Katgara that night. None of his witnesses knew where he was, except his father, who said he was at home, which is at the same place; No. 2 said he knew nothing about the matter, and that the darogah had received money from the prosecutrix and apprehended him unjustly, and named witnesses to prove that he did not take any part in the affair, of which they knew nothing.

"The evidence of the civil surgeon shows that the deceased's throat had been cut, and might have been done with the *dão* produced in court, but that the body was too much decomposed to state whether the injury had been inflicted before or after death, but if after, it must have been done within six hours, as the muscles had retracted.

"The verdict of the jury is 'not guilty,' because there are no eye-witnesses or proof of intrigue with No. 1's mother or enmity, and discrepancies in the evidence of the witnesses, and that the confession must have been made in a state of confusion, because No. 1 assigns as the reason for the deed, intrigue with his mother, which, if true, would have been known to others.

"This is a verdict I cannot concur in; for the intrigue with No. 1's mother is not only stated in the confessions in the Mofussil and before the magistrate, but also proved by the evidence in the foudardar of witnesses Nos. 14 and 15, and I have pointed

out why they have made a different statement in this court, and with regard to the remark of the jury, that if true, it would be known to others, that is not a matter of course, and it is a subject which witnesses are often unwilling to mention. The fact of a bloody cloth and *ddo* having been found early next morning in prisoner's homestead, blood seen near the door of the cow-house, and the marks of many feet there, and also blood under the guava tree in the direction of the well in which the body was found, prove, in my opinion, that the murder was committed in the prisoner's *baree*. Up to the finding of the body in a well near the prisoners' house no one had been apprehended. The prisoners were then apprehended and made the confessions above detailed, and repeated them before the officiating magistrate. In this court no objections have been urged that they were obtained by ill-treatment, intimidation or any other improper manner. I therefore consider them trustworthy, and on consideration of all the evidence would convict No. 1, Sheikh Dollee, of the wilful murder of Sheikh Shanoo, and No. 2, Sheikh Anooah, of being an accomplice therein, and seeing no mitigating circumstances in the case of Sheikh Dollee, would suggest that capital sentence be passed upon him, and No. 2, Sheikh Anooah, be imprisoned for fourteen (14) years, with labor in irons."

Remarks by the Nizamut Adawlut.—(Present : Messrs. W. B. Jackson, A. J. M. Mills and R. H. Mytton.)—MR. A. J. M. MILLS.—"The villagers and relations of the accused have evidently, in this case, done what they could to throw discredit on the evidence. Some of the witnesses, when examined at the trial, professed ignorance upon points to which they had before distinctly deposed, and none of them would admit the existence of an intrigue, which the prisoners stated was the impelling motive for the murder.

"The facts established on evidence are these—Kaloo, the father of the prisoner No. 1, and ~~Dilloo~~ (not put on his trial), have two dwelling-houses some distance apart. He and his family resided in one, and the other, which consists of three huts, was, on the night of the murder, occupied by the deceased and an old woman, the aunt of the prisoner No. 1, who slept in one hut, and by his mother, the prosecutrix and his wife Furmanee, a mere child, who slept in another hut; the third is used as a cow-house. About 3 o'clock in the morning the prosecutrix discovered that her son was missing; she made instant search for him, and found his cloth covered with blood near the cow-house. She aroused the neighbours, and some of them joined, but evidently with a wish to hush up the matter, in the search; a *ddo*, also stained with blood, was found near the same place, and blood in considerable quantity was observed in three spots

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adjacent, as also under a guava tree, in the direction of which there were the marks of many feet.

"The body of the deceased with the throat cut was found in a well, about one hundred cubits distant from the cow-house, by the darogah, on the 31st May. On the second of June the witness No. 13 was apprehended on suspicion induced by his house being the nearest to that of the deceased. He stated that he saw the two prisoners, and Dilloo, Nega and Kaloo, carrying a body in an easterly direction. Upon his information the accused were arrested. The prisoner No. 2 first confessed. He described minutely the manner in which the deceased was inveigled out of his house, thrown down and murdered; and urged that he was compelled by his master, the prisoner No. 2, and Dilloo, to take part with them, and Kaloo and Nega, in removing the body. The prisoner No. 1, Dollee, admitted that he was the actual murderer, but he denounced the witness Bukshee as *particeps criminis*, and stated that he instigated, nay goaded him to commit the murder, on account of the deceased's intrigue with his, the prisoner's, mother, and that he was aided by the prisoner No. 2 and Dilloo. Dilloo also confessed, but like his brother No. 1, screened his father Kaloo, implicating the witness No. 13, the prisoners Nos. 1 and 2, and his brother Nega.

"The prisoners Nos. 1 and 2 made full acknowledgments of their guilt the next day, the 3rd of June, to the magistrate, and Dilloo pleaded 'not guilty.'

"The darogah sent in No. 13 as a witness, as he was of opinion that he had been accused from motives of revenge, in consequence of his having implicated the prisoners. There can be no doubt that he was privy to the murder, and the magistrate would have greatly strengthened the case for the prosecution had he offered him a free pardon under Regulation X. of 1824. His evidence would then have carried more weight with it. As it stands, it is contradictory as to an important fact. Before the darogah and at the trial, the witness deposed to the identity of all the accused in the act of carrying a body, as he said to the darogah, or something like it as he said at the trial, on the night of the murder, across the field; but before the magistrate he stated that he recognized on that occasion only a person resembling the prisoner No. 1. His testimony must, therefore, on the point of recognition, be rejected; but it corroborates the statements of the prisoners in the main, and is so far worthy of credit.

"There is nothing in the circumstances of the case which makes me doubt the correctness or truth of the full confessions, which were made before the darogah and the magistrate by the

prisoners. They have been satisfactorily attested, and the prisoners, though they deny having made them, offer no explanation regarding them. The jury regard them as unfairly obtained, because the witnesses deny all knowledge of any improper intimacy existing between the prisoner No. 1's mother and the deceased. I agree with the sessions judge in considering this a very insufficient ground for discrediting the confessions. The witnesses are all Mussulmen, connected by ties of relationship or brotherhood, and have evinced a decided wish to screen the offenders. It is not surprising therefore that they, averse as all natives are to divulge the existence of an intrigue, carried on by parties in their own village, should deny all knowledge of it.

"I would convict the prisoners on their own confessions, which are corroborated by the general circumstances of the case, and as this was a premeditated, cold-blooded murder, I would sentence the prisoner Sheikh Dollee (No. 1) capitally, and the prisoner Sheikh Anooah (No. 2) to imprisonment for life in transportation."

MR. W. B. JACKSON.—"I concur in convicting Dollee of the murder on his own repeated confessions, and in sentencing him to suffer death.

"As regards Anooah, I find no proof that he was an accomplice in the murder. The witnesses do not say so, and the confession is not to anything which would render him an accomplice. He states that he went as a servant of the others who were his masters, and called him; that he took no active part, although he saw the murder committed, and that he even went against his will. He did not know what they were going to do when he started with them. He however aided in carrying away the body at the instance of the other prisoners, and as he concealed all this, he must be considered an accessory after the fact. I would convict him as an accessory after the fact, and sentence him to seven (7) years' imprisonment, with labor and irons."

MR. R. H. MYRTON.—"This case has come before me in consequence of a difference of opinion of the degree of guilt of the prisoner No. 2. Mr. Mills' convicting him of being an accomplice, Mr. Jackson of being an accessory after the fact. The proof on which his conviction is grounded by both judges, is his confessions to the darogah and to the magistrate.

"In these he states that he went, though unwillingly, with the party who committed the murder, was present when it was committed, but did not assist in its perpetration; and he admits that he aided in removing the body.

"To the darogah he states that he was pulled along with the party. To the magistrate he does not state what sort of compulsion was used. It is not of much consequence what degree of duress was had recourse to. It is evident that the prisoner

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himself does not mean that it was excessive. Moreover, it is contrary to established principle to admit any degree of duress as excusing a person from responsibility for murder. It is clear from his own statement that at the time of the perpetration of the murder, which was committed with premeditation, and with the prisoner's fore-knowledge, he was free to go away, and to raise an alarm, and that he did not do so, but tacitly assented to the murder and assisted the murderers in removing the trace of their crime. Being near enough at the time of perpetration to lend assistance, and to encourage the perpetrators with expectation of aid, he is, in my opinion, liable to punishment as an aider and abettor,* which I apprehend is Mr. Mills' view of the case. I concur with him in the sentence he proposes."

PRESENT :

A. J. M. MILLS, Esq., *Officiating Judge.*

KRISHNO MOHUN SHAH

versus

GOOROO CHURN SHAH (No. 9), RAMDHUN NAPEET (No. 10), KEENOO FUQEER (No. 11, APPELLANT,) FOIZA NUSBA (No. 12), IDAH PRAMANICK (No. 13) AND GUMEERA FUQEER (No. 14).

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Case of
KEENOO FU-
QEER (appel-
lant) and
others.

Conviction
and sentence
affirmed, the
guilty know-
ledge of the
prisoner in
receiving
stolen goods
being esta-
blished.

CRIME CHARGED.—1st count, Nos. 10 to 14, having, on the night of the 25th May 1852, corresponding with the 13th Jeyt 1259, committed a burglary in the house of the prosecutor and stolen therefrom property to the value of Company's rupees 237-4-0; 2nd count, being present, aiding and abetting in the commission of the said burglary; 3rd count, having in their possession property obtained in the said burglary, knowing it to have been so acquired; and 4th count, No. 9, being privy before the fact to the said burglary.

CRIME ESTABLISHED.—Nos. 10 and 12 to 14, burglary; No. 11, knowingly possessing stolen property acquired by burglary, and No. 9, privy before the fact to burglary.

Committing Officer, Mr. R. H. Russell, officiating joint magistrate of Bograh, Rungpore.

Tried before Mr. T. Wyatt, sessions judge of Rungpore, on the 19th July 1852.

Remarks by the sessions judge.—“From the statement of the prosecutor (whose house had been robbed) and the evidence adduced, it is proved that, on the night of the 25th May last, some

* This is in accordance with the definitions adopted by the English law commissioners, *vide* report 7th.

thieves made a burglarious entry into the house of the prosecutor (which he only discovered on the following morning), and robbed him of property to the value of rupees 237-4-0. From suspicion entertained by the prosecutor against prisoner No. 9, the darogah apprehended the prisoner, who confessed to privity to the crime before the fact as meditated, being committed by prisoner No. 10 and another person (not apprehended,) and on the arrest of prisoner No. 10, he confessed to complicity in burglary, implicating prisoners Nos. 11, 12, 13 and 14, who were apprehended, and, with exception to No. 11, confessed to having been accomplices, and No. 11 confessing to the receipt of a portion of the stolen property.

"Their Mofussil confessions were proved to have been voluntary, and prisoners Nos. 11 to 14 were proved to have severally produced a portion of the stolen property they had received, which was identified as the prosecutor's.

"The prisoners simply deny the charges. Nos. 10 to 14 alleging they had been beaten by the police, which they have no evidence to establish.

"The jury, by their oral verdict, find prisoners Nos. 10, 12, 13 and 14 guilty of the first count, and No. 11 guilty of the second count, and No. 9 guilty of privity to burglary before the fact, in which verdict I concur.

"This commitment of the prisoners was made owing to the theft having exceeded rupees 100."

Sentence passed by the lower court.—Nos. 10 and 12 to 14, each, five (5) years' imprisonment, with labor and irons; No. 11, four (4) years' imprisonment, with labor and irons, and No. 9, one (1) year's imprisonment, without irons, and a fine of rupees twenty-five (25) on or before the 18th August 1852, or labor.

Remarks by the Nizamut Adawlut.—(Present: Mr. A. J. M. Mills).—"The prisoner No. 11 has appealed. He was implicated in the confession of the prisoner No. 10 as an accessory both before and after the fact, and it is clear, from the statement he made to the darogah and the magistrate, that he received the stolen articles, with a guilty knowledge. His plea that he got them in payment of tailor's work done for the prisoner No. 10, is not substantiated, and I reject the appeal."

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Case of
KERNOO FUGH-
QEEER (appellant) and
others.

PRESENT :

A. J. M. MILLS, Esq., *Officiating Judge.*

SREEMUTTEEA KHEMEE

versus

KARTICK DOSS.

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Case of
KARTICK
DOSS.Conviction
and sentence
affirmed, the
plea urged in
appeal being
considered
worthless.

CRIME CHARGED.—1st count, highway-robbery, in having forcibly snatched from the neck of the prosecutrix's grand-daughter a necklace valued at rupee 1-10-0, while at a fair; and 2nd count, knowingly having in his possession property acquired by the said highway-robbery.

CRIME ESTABLISHED.—Highway-robbery.

Committing Officer, Mr. V. H. Schalch, magistrate of Midnapore.

Tried before Mr. W. Luke, sessions judge of Midnapore, on the 11th June 1852.

Remarks by the sessions judge.—“The prisoner is charged with highway-robbery. The prosecutrix deposes that on the 11th April she went to a fair, with a child in her arms, and whilst engaged in making some purchases at a shop, the child called out that some person had taken the necklace from her neck. On looking round she saw the prisoner running away, and immediately raised a hue and cry. Two police officers came to her assistance and arrested the prisoner with the stolen property in his possession. These facts are fully corroborated by the evidence for the prosecution. The prisoner pleads ‘not guilty’ throughout; but his defence varies at every stage of the investigation. The assessors declare the prisoner guilty of the charges preferred against him. In this verdict I concur. The evidence against the prisoner is clear and consistent; and there can be, I think, no doubt of his guilt. The robbery appears not to have been attended with any violence; and as the witnesses he has cited depose to his previous good character, the ends of justice will be satisfied by a sentence of three (3) years’ imprisonment, with labor in irons, which is passed accordingly.”

Remarks by the Nizamut Adawlut.—(Present: Mr. A. J. M. Mills.)—“The prisoner has appealed, stating that he accidentally struck the witness Jatadharee in the crowd, and that the latter person induced the prosecutor to bring this false charge against him. The plea was not before urged, and is worthless; and I see no reason to interfere with the sentence of the sessions judge.”

PRESENT:

W. B. JACKSON, Esq., Judge.

RAMPURSHAD SINGH

versus

ROOPUN ROY, ALIAS ROOPNARAIN SINGH.

CRIME CHARGED.—Riot attended with culpable homicide of Lungut Kando, and wounding Gobind Gowala, Gopal Kando, Dibram Singh, Ramdehul Koeree and Beharee Koeree.

CRIME ESTABLISHED.—Riot attended with culpable homicide of Lungut Kando, and wounding Gopal Kando, Dibram Singh, Ramdehul Koeree and Beharee Koeree.

Committing Officer, Mr. A. A. Swinton, magistrate of Shahabad.

Tried before Mr. W. Tayler, sessions judge of Shahabad.

Remarks by the sessions judge.—“The facts of this case were thus detailed in the Statement No. 1 for 1837.

“In this case Lungut Kando was so severely cut and maimed by the prisoners that he died. Gobind Gowala and Dibram Singh were also very dangerously wounded.

“Mouza Julpoora, in which the prisoners reside, has recently been farmed on the part of Government to a Mr. G. Miller; and it seems that they had been encouraged by him to revive a dormant claim to a plot of ground in mouza Khesrabea, the property of the prosecutor, in which *kodo* had been grown; and accordingly, whilst the prosecutor and others were cutting this crop, the prisoners in a large body, armed with *lattees* and *gorasas*, attacked and drove them away and plundered the crops. Upon Ujfawul Singh, as the leader of the party, and one of the principal men in mouza Julpoora, a heavier sentence has been passed than on the others. Several of the witnesses having deposed to Mr. Miller having accompanied the party to within a short distance of the spot where the affray took place, the magistrate has been instructed to call upon him for his defence, and commit him, should he find grounds for putting him on his trial.’

“Subsequently to this, twelve prisoners were sentenced on the same charge, on the 12th April 1837, 17th September 1838, and 29th May 1852.

“The presence and participation of the prisoner before the court is clearly established by the evidence of three eye-witnesses. His name was mentioned in all the previous depositions, and warrants were issued for his apprehension, but he has succeeded in eluding the pursuits of the police.

“Before the magistraté the prisoner pleaded in his defence that the man for whom the warrants were issued was Roopun

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Case of
ROOPUN ROY,
alias ROOPNARAIN SINGH.

The evidence to recognition of the prisoner as being present at an affray, which occurred in 1837, not being deemed satisfactory, he was acquitted by the Nizamut Adawlut on appeal.

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ROOPUN ROY,
alias ROOPNA-
RAIN SINGH.

Singh, and that he had absconded and died ; whereas his name was Roopnarrain Singh.

" Before this court the prisoner abandoned this line of defence, and raised for the first time a distinct plea of *alibi*, stating that he had been absent for twelve years from his village ; and the same witnesses who gave evidence in his exculpation before the magistrate's court, without mentioning the absence of the prisoner before this court, entered into a detailed narration of his having been absent at his uncle's home at a distance from the scene from childhood.

" This story, improbable and absurd in itself, is utterly undeserving of credit ; and, under the circumstances of the case, the fact, if true and susceptible of proof, would have been the first which the prisoner would have pleaded and sought to prove before the magistrate ; whereas the first allusion to the fact is before this court.

" The *futwa* convicts the prisoner of the crime charged and declares him liable to *lazeer*.

" I have passed a light sentence on the prisoner, because I consider, from his appearance, that he must have been young at the time. He has himself given his present age at twenty-eight. The witnesses for the prosecution do not agree as to his years at the time of the affray, but they state that he was grown up. By his own reckoning, he must have been twelve. From his appearance I should think he must have been sixteen to eighteen."

Sentence passed by the lower court.—Three (3) years' imprisonment, without irons, and a fine of rupees twenty-five (25) or labor.

Remarks by the Nizamut Adawlut.—(Present : Mr. W. B. Jackson.)—" The prisoner Roopun Roy is accused of taking part in an affray with homicide sixteen years ago. His age is now twenty-eight ; it must then have been twelve years. The witnesses swear that this is the person they mentioned at the time of the occurrence in 1837 ; and one of them says he had a sword and wounded three persons. He saw this from two *russees* off, another saw him from one and a half *russee* ; and another from ten *russees*. The latter evidence is of no value at such a distance ; and although I have no doubt they say truly that this is the person they alluded to in their former evidence, I consider the recognition from two *russees* off in an affray to be of questionable value ; particularly when the particulars are not given in a satisfactory manner. Further, it is to be considered that a boy of twelve years of age could not do much in an affray of grown-up men. On the whole, I consider the evidence before me insufficient to authorize a conviction. I acquit the prisoner Roopun Roy and direct his release."

PRESENT :

W. B. JACKSON, Esq., Judge.

CHUKOWREE SINGH

versus

RAM GOLAM SINGH, ALIAS GOALEE SINGH (No. 2),
BEKURMAJEET SINGH (No. 3), MAKONDA SINGH
(No. 4) AND BHAIQUEE SINGH (No. 5).

CRIME CHARGED.—Riot, attended with culpable homicide of Gopal Singh, and wounding Chuttoor Singh, nephews of the prosecutor.

CRIME ESTABLISHED.—Riot, attended with culpable homicide of Gopal Singh and wounding Chuttoor Singh, nephews of the prosecutor.

Committing Officer, Mr. A. A. Swinton, magistrate of Shahabad.

Tried before Mr. W. Tayler, sessions judge of Shahabad.

Remarks by the sessions judge.—“The facts established in this case are as follows :—

“On the night of the 4th April 1852, corresponding with the 29th of Cheyt 1259 F. S., Bukhooree Dosad, a village *gorait* and servant of the prosecutor, was returning from the prosecutor's granary, with a handful of peas which the prosecutor had given him, when he was met by Nugrasaith Dosad, another *gorait*, who claimed the grain. A quarrel ensued, when Gopal Singh, the deceased, and Chuttoor Singh, nephews of the prosecutor, who were with Bukhooree but had turned aside to relieve the calls of nature, called out to the men not to quarrel.

“While they were still engaged in the dispute, intimation was given to the villagers of Lather, to which Nugrasaith belongs, and they turned out, in a body of 150 or 200, with their ever-ready sticks, and attacked Gopal and Chuttoor Singh.

“Prisoner No. 5 struck the deceased a blow on the head with a *lobunda*, which appears to have felled him on the spot. Chuttoor Singh was very severely wounded.

“These facts are distinctly and consistently sworn to by seven eye-witnesses including both the *goraits*.

“The evidence of the wounded man, witness No. 1, is confused by the partial loss of his senses, a fact which is corroborated by the civil surgeon. The cause of the ill-feeling seems to have been the conflicting claims of the *goraits*, whose rival interests were supported by the adverse parties respectively.

“A number of sticks were taken from the houses of the several prisoners, and one *lobunda* among them is identified by one witness as the property of Ram Golam Singh (No. 2.) Seven

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The prisoners were acquitted on account of the unsatisfactory nature of the evidence against them.

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witnesses swear to this prisoner *having struck the blow which felled Gopal Singh*, the deceased, to the ground. He is a remarkably large and powerful man, and is the ticcadar of the village.

"The medical evidence is distinct as to death having been caused by an extensive fracture of the skull caused by a blow with a blunt weapon. The marks of other blows were also apparent on the body of the deceased.

"Chuttoor Singh's wounds were very severe; and he remained for some time under treatment at the hospital.

"The prisoners all pleaded 'not guilty', and all set up *alibis* in their defence, bringing forward several witnesses to substantiate their pleas.

"It is unnecessary to enter upon an analysis of this evidence, or to expose in detail the improbabilities and contradictions contained in it. Nothing is easier than to tutor any number of men to say that they have met and seen given evidence between certain specified dates; but when the same men, who swear to an unimportant fact with such unusual accuracy, are found to be utterly unable to speak to any other date connected with any other occurrence, and can give no reason whatever respecting this particular date, such evidence is utterly valueless in itself, and even, if multiplied a hundred fold, is insufficient to counterbalance the direct testimony of eye-witnesses for the prosecution. In this case, it is further weakened by the most palpable contradictions.

"The prisoner No. 5, who is the son of Teeka Singh, a putteedar of mouza Lather, and himself the ticcadar and the leader of the party, has set up a very bold defence, attempting to establish the fact of his having gone to the fair in Oude, producing three witnesses who profess to have seen him there.

"Two of these say that while roaming about at this fair, where hundreds of thousands were collected, they each accidentally asked him, and him alone, what his name was, but can give no reason whatever for selecting him for the object of their unintelligible curiosity. I have frequently commented upon the reckless brutality with which the residents of this district wield the enormous sticks which they carry, and consider it of great importance that a severe example should be made in every case where fatal consequences ensue.

"The *futwa* convicts the prisoners of the crime charged, and declared them liable to *seesut*.

"The prisoner No. 5 is the ticcadar of the village, and his father one of the putteedars.

"All the witnesses swear to his having struck the fatal blow with the iron-bound club; and there can be little doubt that his position and influence would constitute him the leader in the assault.

"There appear to have been only two men connected with the prosecutor, exclusive of the *gorait*, Bukhooree Dosad, and no provocation whatever appears to have been given. The assault was thus savage and unjustifiable.

"I accordingly sentence him to seven (7), and prisoners Nos. 2 and 3 to five (5) years' imprisonment, with labor in irons, and No. 4, who does not appear to have actively participated in the actual assault, to three (3) years' imprisonment, and a fine of rupees fifty (50) in lieu of labor."

Remarks by the Nizamut Adawlut.—(Present: Mr. W. B. Jackson.)—"The evidence to the prosecution in this case is in my opinion not satisfactory. The story is that one night two *goraits* were disputing about a few handfuls of grain, which one had received from the (*kulleen*) threshing-floor, when two men, Gopal Singh and Chuttoor Singh, interfered to quiet them. On this a large party of two hundred and fifty men attacked them, and killed Gopal and nearly killed Chuttoor. There is no doubt that Gopal was killed and Chuttoor wounded; but it is in no way shown how the prisoners were interested in the quarrel, or why they should make such an attack. Moreover, the precision, with which the eight witnesses to the prosecution swear which of the prisoners struck whom, and with what weapon, how often, where the blow alighted, &c., is quite unaccountable and inconsistent with the fact that this occurred at night, and by the sudden onset of two hundred and fifty men. The evidence throughout has an air of improbability, and of having been got up. I acquit the prisoners, and direct their release."

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SINGH, *alias*
GOALEE
SINGH and
others.

PRESENT :

A. J. M. MILLS, Esq., *Officiating Judge.*

PUNCHIE KULLOO

- *versus* -

BHAGBUT NAIK, GHATWAL (No. 13), DASSOO LOHAR, ACTING GHATWAL (No. 15) AND HAROO ROY, CHOWKEEDAR (No. 18).

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Case of
BHAGBUT
NAIK GHAT-
WAL and
others.Conviction
affirmed, but
sentence miti-
gated on vil-
lage police of-
ficers found
guilty of da-
coity.

CRIME CHARGED.—1st count, Nos. 13 and 15, dacoity in the house of the prosecutor and plundering therefrom property to the value of rupees 65-12-0, on the night of the 1st March 1852, corresponding with 19th Phagoon 1258 B. S. ; 2nd count, No. 18, accessory before and after the fact of the said dacoity ; and 3rd count, Nos. 13 and 18, knowingly receiving and having in their possession property acquired in the said dacoity.

CRIME ESTABLISHED.—Nos. 13 and 15, dacoity in the house of the prosecutor, and plundering therefrom property to the value of rupees 65-12-0, and No. 18, accessory before and after the fact of the above dacoity.

Committing Officer, Mr. W. J. Longmore, officiating joint magistrate of West Burdwan.

Tried before Mr. P. Taylor, sessions judge of West Burdwan, on the 2nd August 1852.

Remarks by the sessions judge.—“Seven prisoners were originally apprehended in this case ; one of whom, named Gooroo Mal, died in jail.

“Nobody witnessed the dacoity, but the prosecutor, who declared immediately after it to the neighbours, witnesses Nos. 5, 6 and others, that he had recognized prisoners Bhagbut Naik Ghatwal (No. 13) and Mohadeb Gope Ghatwal (No. 17) by the light of the *mussals* which the robbers carried.

“Information was given to the ghatwals the same night, and Bhojrub Ghatwal (witness No. 4) passed it on to the Oundah thanna next day.

“When the prosecutor was questioned by the ghatwals, on their arrival at daybreak on the 20th Phagoon, he repeated his statement as to recognition of the prisoners Nos. 13 and 17, and pursuit was commenced immediately.

“The residence of prisoner No. 13 was at Kamardeeha, a village very near Ekkora, which is that of the prosecutor, and traces of the passage of the dacoits were immediately found in that direction.

“These, consisting of drops of oil and bits of rag and dried sugar-cane stalk from the *mussals*, bits of *simul* cotton from a pillow, which had been torn open in search of money, a little

antlo, a broken handee and footsteps, were followed up to the house of prisoner No. 13, at Kamardeeha, and into the vicinity of those of prisoners Binode Roy and Mohadeb Mundle (prisoners Nos. 16 and 17), who resided at Raootara, a village half a *coss* from that of the prosecutor.

"No. 13 was absent, but No. 17 was seized in his wheat field; shortly after which occurrence No. 13 came up of his own accord. When first questioned as to where he had been, he said to Nootungram, another village not very distant (and which was the residence of the prisoner who died in jail). On being further pressed by the *ghatwals*, the same prisoner confessed that he had been at the dacoity, and named all the others, as his coadjutors in the crime. Subordinate police officers were thereupon sent to surround the houses of the persons designated, and to seize their persons, which was done. At this juncture, the mohurir of thanna Oundah arrived, and took up the investigation. The first thing he did was to examine the prosecutor and call upon him for a list of the property stolen, and that individual went home and prepared it. On the morning of the next day, *viz.*, 21st Phagoon, the darogah came, held the usual investigation on the premises broken into, took the list prepared by prosecutor from him, and went with him to search the house of Bhagbut Naik (prisoner No. 13), at Kamardeeha.

"Before search took place, the said prisoner* stated orally, that he had been at the dacoity with the committed prisoners and others, but had received nothing at the time, but a broken bell-metal *kutora*, as Dassoo (prisoner No. 15) and the deceased, Gooroo Mal, had removed the rest of the property, with a view to its sale and subsequent partition of the proceeds. After saying this, he produced the broken *kutora* alluded to, and his house was searched and a *kodalee* also found.

"Both articles appeared in the list previously given in by the prosecutor, and were recognized by him, though the prisoner claimed that last alluded to. His* written confession was then taken by the mohurir, who had been sent for from Raootara, to that end. As Haroo Chowkedar (prisoner No. 18), then present, was named in the confession of No. 13, he was immediately taxed with complicity, and confessed at once, naming the prisoners committed, except Kallee Churun (No. 14) and Binode Roy (No. 16). The houses of prisoners Nos. 16 and 17 were then searched at Raootara, and no property was found, but prisoner No. 16 confessed complicity in the dacoity. Upon this the darogah went off to Datneh and Jumjooree (another neighbouring village), for the purpose of searching the houses of Dassoo (No. 15) and Kallee Churun (No. 14) leaving the mohurir to do the same with those of Haroo (No. 18) and the deceased, Gooroo Mal. Haroo had confessed having been accessory before

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and after the fact, and having received some *soorgooja* or *til* seed in lieu of hush money. This was found in his house, and a *goon* or sack was discovered in that of the deceased prisoner, Gooroo Mal. Both the sack and *soorgooja* appeared in the prosecutor's list of stolen property, and he duly claimed them as his own.

"The houses of Dassoo (No. 15) and Kallee Churun (No. 14) were searched at Datneh by the darogah, and also that of one Muthoor Bauree, Chowkeedar, pointed out by Dassoo, as a receiver of part of the property, but nothing was found except a *gelaf* or sheet in Kallee Churun's hut, which was claimed by that prisoner; Dassoo then confessed.

"The *sooruthal*, the apprehension of the prisoners, the finding and the recognition of the property, and the confessions, were all sufficiently supported by the evidence adduced under those heads in the calendar, but some of the witnesses for the prosecution, *viz.* : Nos. 5, 7, 8, 9 and 10, declared that the prisoners Bhagbut (No. 13), Mohadeb (No. 17) and Binode (No. 16), had, with their women and children, been beaten and disgraced by the ghatwals before the arrival of the darogah and mohurir, and that the confessions of Nos. 13 and 16 had been thus extorted.

"The prisoners Dassoo (No. 15) and Haroo (No. 18) repeated their confessions before the law officer, who was in charge of such duties when they were sent into the station in consequence of the officiating joint magistrate's absence in the interior of the district; but the prisoners Bhagbut (No. 13), and Binode (No. 16) retracted and declared that their Mofussil confessions had been extorted by violence. The other prisoners also denied complicity in the dacoity.

"Such part of the evidence of the witnesses for the prosecution, Nos. 7, 8, 9 and 10, taken before the sessions court, as had reference to the alleged beating and disgracing of prisoners Nos. 13, 17 and 16, and their wives and children, by the ghatwals, was discrepant and unworthy of credence. Moreover, it appeared that No. 7 was the *poorohit* of prisoner No. 17, while Nos. 8, 9 and 10 were all, more or less, his friends and connexions. No. 5 only deposed to *dhumuck chumuck*, or threats. It was also affirmed that the alleged violent treatment was inflicted *coram publico*, which is incredible in itself; and the mohurir (witness No. 11) saw no traces of blows on the prisoners' persons, on his arrival at Raootara, nor did any of the prisoners make complaint to him then or at any other time.

"Witness No. 9, Chota Bauree Dass, committed perjury in regard to the confessions, and was made over to the magistrate for trial on that charge.

"All the prisoners pleaded 'not guilty' before the sessions court.

"The defence of No. 13 was that the prosecutor had pretended to recognize him, out of spite, in consequence of his having once twisted his ears, by order of the talookdar, to enforce payments of the rent of an *ijara*, which he had taken; that he had been beaten and his wife disgraced to superinduce confession; that he had not produced the broken *kutara* himself, and that both that and the *kodalee* were his, and had been purchased by him at a fair years ago; that Bhoyrub Ghatwal hated him, because he had refused him a *douceur* on a certain occasion; and that he had been on his beat during the whole of the night on which the dacoity took place.

"Prisoner No. 14 affirmed that the sheet found in his house was his; that he knew it by corresponding marks in two places, which had been simultaneously burnt by the fall of a hot coal out of his *chillum*, on a certain occasion, and that he had been at home all night on the 19th Phagoon:

"Prisoner No. 15 stated that he was at Datneh, with his mother, on the above night, and that his Mofussil confession had been extorted by violence. He accounted for his having repeated his confession before the law officer by saying that Bhoyrub Ghatwal had encouraged him to do so by a promise of getting him off if he adhered to his former story.

"The defence of prisoner No. 16 was similar to that of No. 13, and was nearly in the words of witnesses Nos. 7, 8, 9 and 10, whose depositions had been read in his presence, whereas his answer before the foudaree court had contained no particulars.

"Prisoner No. 17 defended himself in the same manner as the above, and added that he was on his beat all night on the 19th Phagoon.

"Prisoner No. 18 affirmed that he had done all he could to arouse the villagers on the night of the dacoity; that his confessions had been made at the suggestion of the ghatwals; that the *soorgooja* or *til* seed had been surreptitiously introduced into his house by Kallee Kothwal Ghatwal and the prosecutor's son Seeboo; and that he had gone his rounds on the night of the robbery as usual.

"The evidence of the witnesses of No. 13 was discrepant and unworthy of credence.

"The witnesses of No. 14 deposed satisfactorily as regarded the sheet found in his house; and two of them stated, that they had seen him at 12 o'clock, on the night of the dacoity, in his own village and habitation. His character was also well spoken of.

"Those of prisoner No. 15; knew nothing as to his character, or his whereabouts on the night of the dacoity; and he had no evidence of ill-treatment to adduce.

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"The witnesses of No. 16, in regard to his mal-treatment by the ghatwals, were not worthy of credence.

"Those of No. 17 were not credible in regard to his alleged mal-treatment, but one or two spoke to the goodness of his character; and he was seen in his own village up to one and a half *puhurs* on the night of the dacoity.

"The witnesses of No. 18 said nothing in his favor.

"None of the prisoners appear to have been convicted or punished in any previous case.

"As the prisoner Bhagbut (No. 13), was recognized by the prosecutor, at the time of the dacoity, the trail was clearly traced up to his house; his Mofussil confession was duly proven, and agreed with those of Dassoo and Haroo, in which he was mentioned, as two easily recognizable articles of property, which appeared in the previously prepared list of prosecutor, were taken out of his house, one of them by himself; as the evidence of his mal-treatment by the ghatwals was unworthy of credence, while circumstances militated against its having taken place, and as he failed to establish enmity on the part of the prosecutor, or to clear himself by the evidence of his own witnesses, I considered the first and second counts charged against him legally proven, and, in consequence of his being a ghatwal, sentenced him as noted.

"Though prisoner No. 14 was mentioned in the confessions of Haroo, Dassoo, and Bhagbut, the evidence adduced by him in his defence was credible; and I therefore considered complicity in the dacoity not proven against him, by the said confessions alone, and ordered his release.

"As prisoner No. 15 confessed in the Mofussil, at a distance from the others, to facts coincident with what they had stated, and named most of the same persons pointed out by them; as he repeated the same confession before the law officer; as his defence entirely failed, and as he had no proof of violent treatment or coercion to adduce, I considered the first count of the charges fully proven against him, and in consequence of his being a ghatwal, sentenced him as noted.

"Although the evidence of mal-treatment of prisoner No. 16 and his wife, by the ghatwals, was apparently collusive, and unworthy of belief, and he was mentioned in the confessions of prisoners Nos. 15 and 18, no property was found in his house, and the trail was not distinctly brought up to the same; it did not therefore appear why he should have confessed, if some sort of coercion had not been adopted by the village police, who are ever ready to resort to such a measure.

"Consideration of these circumstances led me to conclude that this prisoner's complicity in the crime charged was not so dis-

tinctly proven as to warrant his conviction, and I accordingly ordered his release.

My reasons for releasing prisoner No. 17 were of a similar nature. He never confessed; and the prosecutor may well have been mistaken in his alleged recognition at the time of the dacoity. Mention of his name, in the confessions of the other prisoners, may have been caused by enmity on their part, or suggestion on the part of the police, or prosecutor. These village communities are so steeped in mutual hatred, that many an innocent man is daily dragged into legal danger, by gratuitous accusations instigated by it.

"As prisoner No. 18 twice confessed to facts stated by other prisoners, who acknowledged the deed and named them in so doing, as the reward of his silence and non-interference was found in his house, as he was absent from his post on the night of the dacoity, and as he could offer no defence, I considered the crime of having been accessory, before and after the fact, fully proven against him, and in consequence of his being a chowkeedar, sentenced him as noted.

"The law officer was directed to take the confessions, by a proceeding of the officiating joint magistrate, which is mentioned in another, dated 29th July 1852, called for by me and placed with the record. The law officer (who has since demised) ought not to have made Government chaprassées witnesses to a confession, with reference to the court's order, No. 169 of the 28th February 1850.

"The thanna papers, having reference to a subsequent dacoity in prosecutor's house, were sent for and examined, but nothing elucidatory of the case under remark was elicited from them."

Sentence passed by the lower court.—Nos. 13, 15 and 18, each, twelve (12) years' imprisonment; two (2) years in lieu of stripes, and two (2) years more in consequence of their being police officers, altogether sixteen (16) years' imprisonment, with labor in irons, in banishment.

Remarks by the Nizamut Adawlut.—(Present: Mr. A. J. M. Mills.)—"The appeal of the prisoners is a mere recapitulation of their defence. The sessions judge has clearly and correctly set forth the facts as established in evidence; and I see no reason to question the propriety of the conviction of the prisoners.

"Though the prisoners are village police officers, yet considering that the dacoity is not marked with any circumstances of aggravation, and the prisoners have not been convicted in any previous case, I think the justice of the case will be sufficiently met by sentencing them to fourteen (14) years' imprisonment, in banishment. I reject the appeal, and sentence them as above stated."

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PRESENT:

W. B. JACKSON, Esq., *Judge.*

A. J. M. MILLS, }
 AND } Esqrs., *Officiating Judges.*
 R. H. MYTTON, }

IZZUTOOLLAH AND GOVERNMENT

versus

CHAND MANJEE (No. 3), JUNGGOO MANJEE (No. 4)
 AND MAHOMED ALEE (No. 5).

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Case of
 CHAND MAN-
 JEE and
 others.

Three pri-
 soners sen-
 tenced to
 death for pre-
 meditated
 murder from
 motives of re-
 venge, the
 alleged cause
 for the act
 being that the
 deceased had
 intrigued with
 the wife of
 one of them.

CRIME CHARGED.—Wilful murder of Ukbar.

Committing Officer, Mr. W. M. Beaufort, magistrate of
 Backergunge.

Tried before Mr. A. S. Annand, officiating sessions judge of
 Backergunge, on the 28th August 1852.

Remarks by the officiating sessions judge.—“ From the state-
 ment of the prosecutor Izzutoollah, it appears that the deceased
 Ukbar was his elder brother; that one Monday in Jeyt last,
 the date of which he does not recollect, about 12 o'clock, his
 mother, who lived in the same house with his brother Ukbar at
 a short distance from deponent's, came to him and told him that
 Ukbar had gone to sleep in the northern house on the previous
 night, but was not to be found in the morning, and that up to
 that time she had heard nothing of him. Deponent told her
 that he had probably gone to sow rice in the *chur*, but suspected
 from what he heard that something was wrong. On going to the
 house of deceased, he found that Usgur, who was a ploughman
 of deceased, had returned from the *chur*, and he said that Ukbar
 had not been there on that day. On this deponent's fears in-
 creased, and he inquired for his brother in various places, but
 could get no tidings of him. After being unsuccessful in his
 search, he remembered having heard that his brother was
 intimate with the wife of the prisoner Chand Manjee (No. 3),
 and he then suspected that he and his brother, the prisoner
 Jungoo Manjee (No. 4) and the prisoner Mahomed Alee (No.
 5) and the prisoner Panch Cowree (No. 6), had murdered him,
 and on this suspicion he went to the neighbouring police *pharee*
 and informed the mohurir of what has been above stated. The
 mohurir gave him a burkundauz named Aradhun to assist him
 in his search for his brother, and they went together and searched
 the jungles near the village in all directions but found nothing;
 that on the evening of the next day, Tuesday, people coming
 from the *hât* of Kumolapore, and Koorban, a neighbour of
 deponent, who had been sent there to tell his nephew Jan Ma-

homed of the disappearance of Ukbar, brought intelligence that his dead body had been found floating on the Kumolapore *khal*. On the following morning deponent and the thanna burkundauz started for that place, found the body, took it out of the water, and brought it to the house of deponent, who had recognized it at once as the body of his brother Ukbar. There were five wounds on the crown of the head; one behind each ear, one above the left eye, and one on the chin; all apparently inflicted with a *dáo*; the throat also was cut, the wind-pipe having been severed, and there were three wounds on the left hand. The mohurir then sent in the body and commenced the inquiry, and on apprehending the prisoners, they all confessed that they had murdered Ukbar. The deceased resided with his wife and mother, and had one daughter four years' old, and one boy ten months' old. Kumolapore *khal*, where the body was found, is six *ghurries* distant from the house of deceased. The prisoner No. 4 is the brother of prisoner No. 3; prisoner No. 5 is the friend of prisoner No. 3, and prisoner No. 6 is brother of the friend of the father of No. 3, and had been turned out of his chowkeedarship by deponent's brother, Ukbar, who was a tehsildar of Nundocomar, the proprietor of the land on which they live, and they therefore assisted No. 3 to murder Ukbar, on account of the illegal intimacy which subsisted between his wife and the deceased.

"The prisoner Chand Manjee (No. 3) confessed the crime with which he was charged to the darogah and before the magistrate. In my court he pleaded 'not guilty'. The substance of his confession before the magistrate was, that he and the other three prisoners killed Ukbar; that Ukbar had come to his house when he was sleeping with his wife, and put his hand upon her body, when she awoke him, and he tried to seize Ukbar but could not; that he, deceased, had then tried to get her away from him by magic, burning *dhoona*, &c., and had threatened that he would kill her if she would not consent to satisfy his desires; that his wife had advised him to leave the place to save her honor, when they went across the *khal* to the ground of Moonshee Sumeerooddeen; that then Nundocomar Doss, the landlord, at the instigation of deceased, got up a Regulation VII. suit against prisoner, when he returned to his old residence; that Ukbar then got hold of his wife and dishonored her, and that she told it to prisoner, from which time he formed the design of murdering him; that he told no one then, but shortly afterwards, the said Ukbar having got up a charge of procuring abortion against Panch Cowree (prisoner No. 6), and there being enmity between them on that account, and knowing also that prisoner Mahomed Alee (No. 3) had been

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wronged by Ukbar, he communicated his design of murdering him to them, and also to his brother Jungoo (prisoner No. 4), and they agreed to assist him; that two or three days before the murder, he told Ukbar that if he would come with him to take away the daughter of Modun Guramee, secretly, she could be married to his (prisoner's) brother, and deceased agreed to go with them for that purpose; that on this they determined that that would be a fitting opportunity to kill him; and that under pretence of going to carry off the daughter of Modun Guramee, they would decoy Ukbar to the banks of the *khal* and murder him there; that on the night of the occurrence, Sunday, he took the *dāo* produced in court, and got together the other prisoners; that he and Jungoo then went to call the deceased, who was sleeping alone in his house, having agreed before that he was to accompany them that night. They then started, and coming to where Panch Cowree (No. 6) and Mahomed Alee (No. 5) were waiting for them at a *khal*, when Ukbar descended the bank, Panch Cowree rushed at him, seized his throat with one hand and his hair with the other, Mahomed Alee put a *gumcha* (a piece of cloth) round his neck, and the deponent Chand Manjee (No. 3) struck him four or five blows with the *dāo* now produced. One blow fell upon the fingers of his right hand, another above his right or left eye, and the others he knows not where. Jungoo (No. 5) had seized his feet and held him, whilst he was being killed. In a few minutes he died. Panch Cowree and Mahomed Alee had also struck him with *lattees*. Having pushed the body into the water, they went home, deponent carrying the *dāo*, which he had washed. Jungoo Manjee (No. 4) confesses both at the thanna and before the magistrate, his participation in the murder as above detailed. In my court he pleads 'not guilty'. Mahomed Alee (No. 5) allows that he went with the other prisoners for the abduction of Modun Guramee's daughter, and that he stood at a distance and saw the murder committed, but he did not participate in it himself. Before me he pleads 'not guilty'. Panch Cowree (No. 6) confessed at the thanna, but denied all knowledge of the case before the magistrate and in my court.

" Witness No. 13, deposes that he lives in the same house with prisoner No. 5, and that on the night in question, the prisoner and No. 3 were there, and that prisoners Nos. 4 and 6 came there also, when all four went out together. The next morning he saw No. 5 had returned, and at 12 o'clock of that day, he heard that Ukbar had disappeared.

" Witness No. 14 corroborates the above.

" Numerous witnesses depose to the fact of there having been an illegal intimacy between deceased and the wife of prisoner

No. 3, and that there were other causes of enmity between the other prisoners and deceased, as stated by the prosecutor, and corroborate the deposition generally.

"The *sooruthal* states that there was one wound, four fingers long, two broad and two deep, behind the right ear; one on the windpipe, two fingers long, one broad and half deep; one on the left side of the neck, three fingers long, two and a half broad, one deep; one on the left side of the forehead, seven fingers in length, three and a half broad and four deep; and one wound on the right hand and one on the left; and that the body was covered with the marks of blows apparently from clubs. No *post mortem* examination could be held by the civil assistant surgeon, the body being decomposed before its arrival here.

"The jury who assisted me to try the case differ in their opinion. The *cazee* found the prisoner No. 3, guilty of wilful murder, and Nos. 4, 5 and 6, guilty of aiding and abetting in the murder. A second jurymen declared, that Nos. 3 and 4 were guilty of wilful murder, No. 5, of privy to the murder and acquitted No. 6; and the third jurymen convicted prisoners Nos. 3, 4 and 5, of wilful murder, and No. 6, of homicide. My own opinion is, that the prisoners Nos. 3 and 4, are proved guilty of the wilful murder of Ukbar, by their own confessions and from the general circumstances of the case, and that the prisoner No. 5, is guilty of the same, upon violent presumption, afforded by his own confession and the general circumstances of the case. I have acquitted prisoner No. 6, as there is no direct evidence against him but his own confession at the *thannaa*, and the confessions of the other prisoners, upon which he cannot of course be convicted.

"This atrocious murder seems to have been long premeditated and carefully accomplished. The deceased, against whom the prisoner No. 3 had good cause for enmity, on account of the intimacy with his wife, was decoyed out at night on pretence of giving assistance to the prisoners in the abduction of a girl from her father's house, and when they got him to a convenient place, and which had probably been previously fixed upon for the murder, they set upon him, and killed him, as detailed in the confessions of the prisoners Nos. 3 and 4. It is difficult to understand why they confessed; for though no doubt suspicion would have rested on them on account of the previous animosity that existed between them and deceased, the crime would not in all probability have been brought home to them, as it has now fully been by their acknowledgment of it, coupled with the circumstances of the case as given in the evidence. I see no extenuating circumstances, and recommend that each of the prisoners should suffer the extreme penalty of the law."

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Remarks by the Nizamut Adawlut.—(Present: Messrs. W. B. Jackson, A. J. M. Mills and R. H. Mytton).—MR. R. H. MYTTON.—“This is, I think, the most carefully preconcerted and deliberate murder that ever came under my notice. The crime is fully established against the prisoners by their own confessions; and I concur with the sessions judge in the conviction of the prisoners of wilful murder, and in the propriety of sentencing them capitally.

“The crime was also proved against Panch Cowree (No. 6) by his Mofussil confession, corroborated by the evidence of witnesses Nos. 13 and 14. On the sessions judge’s own showing, he should not have been acquitted.”

MR. W. B. JACKSON.—“Two of these three* prisoners, Chand and Jungoo, confessed the murder before the magistrate. They both took an active part in the perpetration of it; but they both state and there is evidence of witnesses in support of their statement, that the deceased had for some time been attempting to have criminal connexion with Chand’s wife, and had been caught by him in the house at night. This the wife confirms, but Chand asserts that she told him, that deceased had at last succeeded by force:—further, that previous to this, he had, on account of his ill-success with the wife, brought a false summary suit against Chand. I see no reason to doubt the truth of the fact that deceased had for some years been attempting to seduce Chand’s wife, or that it was Chand’s belief that he had succeeded. This is part of Chand’s confession. It was not a fact which admitted of legal proof in defence, but I receive it as proved by the confession itself. It is rendered more probable by the fact, that deceased was enticed to go with the prisoners, who were his enemies, in the hope of stealing away the daughter of another party; and it was while engaged on this unlawful errand, in company with the prisoners, that they murdered him. There seems to have been no other motive on the part of the prisoners than that of enmity, on account of his conduct to Chand’s wife. Such a motive will not, however, justify murder, much less a premeditated murder effected by a conspiracy. Jungoo is Chand’s brother, and may be admitted to be actuated by the same motive. I concur in convicting Chand and Jungoo of the murder.

“The prisoner Mahomed Alea, in his confession before the magistrate, admits that he went with the party, and saw the murder committed, but did not take a part, or know that the others intended to commit murder. In the Mofussil he confessed to going for the purpose, and taking an active part in the murder

* No. 1 Chand Manjee.
No. 2 Jungoo Manjee.
No. 3 Mahomed Alea.

itself. He has not the same excuse as Chand and Jungoo, of personal enmity. I do not think a Mofussil confession alone sufficient for conviction, but followed by a partial confession before the magistrate, and supported by circumstantial evidence, as to his going with the party, I think it may be admitted. I would convict Mahomed Alea also of the murder.

"Taking into consideration that Chand had been grossly wronged by the deceased, who, there is reason to believe, had criminal intercourse with his wife the last two or three years, I would not pass a capital sentence, which should, in my opinion, be reserved for cases in which there is no circumstance of a mitigating nature, but would sentence the three prisoners to transportation for life."

MR. A. J. M. MILLS.—"Of the guilt of the prisoners, there is no room for doubt; but I regret I cannot concur with Mr. Jackson, in allowing the circumstances stated by him to have any weight in mitigation of punishment.

"Had the act been committed on immediate provocation, or under feelings of irritation consequent thereto, I would willingly have joined him in passing a secondary sentence; but this was not the case. The act was the result of a long premeditated design. A week before the murder was perpetrated, the accused individuals, who had all cause for enmity against the deceased, deliberately conspired together to wreak their joint and cold-blooded revenge; and it was previous to this plot being formed, that the deceased had, as it is alleged, *last* visited the house of the prisoner Chand, for the purpose of having criminal intercourse with his wife. I cannot consider these facts as presenting any circumstances of extenuation. The case is one of cruel, deliberate murder, which calls for the infliction of the extreme penalty of the law.

"The three prisoners are equally guilty. They all participated in the deed; and I concur therefore, with Mr. Mytton, in sentencing them to suffer death."

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PRESENT :

R. H. MYTTON, Esq., *Officiating Judge.*

GOVERNMENT

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Case of
SONAOOLLAH.Perjury.
Sentence of
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confirmed in
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CRIME CHARGED.—Perjury, in having, on the 29th July 1852, intentionally and deliberately deposed, under a solemn declaration taken instead of an oath, before the magistrate of Sylhet, that on Monday ‘I went to Rojoo prisoner’s house and saw him sick; he had a boil on his back.’ And in having, on the same date, again intentionally and deliberately deposed, under solemn declaration taken instead of an oath, before the said officer, that ‘I did not see the prisoner sick with my own eyes, but I heard that he was sick,’ such statements being contradictory to each other, on a point material to the issue of the case.

CRIME ESTABLISHED.—Perjury.

Committing Officer, Mr. W. B. Buckle, magistrate of Sylhet.

Tried before Mr. F. Skipwith, sessions judge of Sylhet, on the 4th August 1852.

Remarks by the sessions judge.—“One Rojoo was charged before the magistrate by Moulvee Kurreemdad Khan, deputy collector, with having, on the 30th of Assin, instigated one Joomun to assault him.

“The prisoner denied the charge, and pleaded that he was ill on that day, and had never come into Sylhet at all; and he was called upon to prove the *alibi*.

“On the 28th of July he deposed that he heard that the prisoner was ill, and on being cross-questioned on the 29th by the magistrate, said he knew he was ill, because he had gone to his house and seen him, and that he had a boil on his back. In his deposition, however, he stated he had been at other places during the day; and on being questioned how he could then have seen the prisoner, he deliberately declared he had not seen him, but only heard he was ill, and that he had said he had seen him by mistake, as he is but a child. The deposition was duly proved; and though the prisoner in his defence asserts that the contradictory statements were made in the confusion of mind, there can be no doubt but that they were wilfully and deliberately made; and I agree with the verdict of the assessors, which convicts him of wilful perjury: he is no child, but twenty years of age.”

Sentence passed by the lower court.—Three (3) years’ imprisonment, with labor in irons.

Remarks by the Nizamut Adawlut.—(Present: Mr. R. H. Mytton.)—"The prisoner appeals, asserting that at the time of his examination by the magistrate he was suffering from *bad*, by which he may perhaps mean some affection of the mind, but it is applied to so many descriptions of complaint by natives of the lower order, that it is difficult to know exactly what is meant. The prisoner appears to have, with deliberation, given contradictory statements on a point material to the case, and the excuse is futile. The appeal is rejected."

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Case of
SONAOULLAH.

PRESENT:

R. H. MYTTON, Esq., *Officiating Judge*.

KANDOORAH CHUNG

versus

ASARA MUNDUL.

CRIME CHARGED.—1st count, having, on the night of the 19th April 1852, corresponding with the 8th Bysakh 1259, committed a burglary in the house of the prosecutor, and stolen therefrom, property valued at rupees 8-11-0; and 2nd count, having in his possession property acquired by the said burglary, knowing it to have been so obtained.

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CRIME ESTABLISHED.—Burglary.

Committing Officer, Mr. R. H. Russell, officiating joint magistrate of Bograh, Rungpore.

Tried before Mr. T. Wyatt, sessions judge of Rungpore, on the 8th July 1852.

In a case of burglary, sentence of four-teen years' imprisonment on a prisoner, twice before convicted of cattle-stealing, confirmed.

Remarks by the sessions judge.—"From the statement of the prosecutor (whose house was robbed) and the evidence adduced, it was proved that, while the prosecutor and witness No. 2, were sleeping in the eastern compartment of his premises, and his mother, wife and sister and his children, were sleeping in the southern compartment, he (prosecutor) was alarmed by his mother calling to him that some thieves had committed a burglary and had escaped; when the prosecutor and witness No. 2, seeing four persons at a short distance before them, gave them chase, in which they were joined by an immediate neighbour (witness No. 3,) who had been alarmed by the prosecutor, and in the way they were met by a village chowkeedar, who followed them. The prosecutor, being in advance, seized the prisoner with two brazen vessels, his (prosecutor's) property, and a *sind-katee* in his (prisoner's) waist, which he drew out to defend himself, when, with the assistance of his comrades,

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prosecutor wrested it from his hand, and secured him. Having tied him by his hands to a tree that was near during the remainder of the night, they remaining in watch over him, when on information forwarded to the thanna, the police mohurir came to the spot the next day, and found the prisoner in the hands of the prosecutor and his comrades (witnesses Nos. 1, 2 and 3,) with the *sind-katee* and the stolen property. The police mohurir then taking the prisoner to the prosecutor, saw that a burglarious entry had been made into the southern compartment, by a hole, large enough to admit a man's body, having been dug under the earthen floor of the room. The stolen property was identified as the prosecutor's.

"In his defence, the prisoner denied the charges, stated that he was going from his home to Sultanpore, to fetch his sister thence, when, on the way, it being dark, he stayed the night at the prosecutor's, with whose sister-in-law having held before an adulterous intercourse, the prosecutor bore him enmity, and finding that he wanted to beat him, he (prisoner) fled at one and a half *puhur* of the night, towards his home, when the prosecutor and witnesses Nos. 2 and 3, taking a circuit, confronted and seized him, placing the stolen property before him and kept him during the night in the meadow, all which the prisoner told the police.

"The prisoner called no evidence.

"The jury convicted the prisoner of the second count. I dissented, and on violent presumption convicted him of the first count (the burglary having been proved, the *sind-katee* found on the prisoner, with the stolen property,) and as it was recorded on the magistrate's proceedings that the prisoner had twice before been convicted and punished for cattle-stealing, I passed the severe measure of punishment against him stated.

"This commitment was made owing to the prisoner having twice before been convicted and punished for cattle-stealing."

Sentence passed by the lower court.—Fourteen (14) years' imprisonment, with labor and irons, in consideration of his having, on two former occasions, been convicted and punished for cattle-stealing.

Remarks by the Nizamut Adawlut.—(Present: Mr. R. H. Mytton).—"The prisoner in his appeal states that witnesses he cited to prove enmity against him on the part of the prosecutor, were not sent for. The fact of his having cited witnesses is not apparent on the record, but the contrary. He also pleads that as he never was convicted before, the sentence is excessive. This plea is also founded on a false assertion. The record shows that he has been twice convicted of cattle-stealing, and he admitted this to the darogah and to the magistrate.

" His defence to the magistrate was, that he had an intrigue with the sister of prosecutor's brother's wife, Oojola: in the sessions, that the intrigue was with the brother's wife herself. These contradictory statements show that they are also false, and, from their injurious tendency, rather aggravate the prisoner's offence. He has been rightly convicted, and deserves the punishment awarded. His appeal is rejected.

" The prisoner will be called up, and these remarks explained to him by the magistrate, in open court."

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Case of
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DUL.

PRESENT :

R. H. MYTTON, Esq., *Officiating Judge.*

GOVERNMENT

versus

ISHUR JOOGY.

CRIME CHARGED.—1st count, wounding with intent to murder Govind Singh; and 2nd count, intent to cause some grievous bodily harm.

CRIME ESTABLISHED.—Wounding Govind Singh.
Committing Officer, Mr. E. A. Samuells, Magistrate of 24-Pergunnahs. *

Tried before Mr. E. Bentall, additional sessions judge of 24-Pergunnahs, on the 5th August 1852.

Remarks by the additional sessions judge.—"The prisoner Ishur Joogy and Govind Singh, had been drinking *taree* together, but do not appear to have been insensible, although they may have been excited. A dispute arose between them, owing to Govind's having accused the prisoner of having robbed him of a rupee from his box. From words they proceeded to struggle together, and they rolled off the platform, on which they had been sitting. During the struggle, the prisoner stabbed Govind with a knife, which has not been produced in court, and might have been of any length from six to thirteen inches long. The prisoner was seen by different witnesses to inflict the wounds, and he ran off, and was followed and apprehended by different people, and given into the charge of the police. Govind Singh was wounded on the 31st March, and he says that he was taken to the hospital the same night, and that his wound was not probed, but was tied up, and that there was one wound on his arm, which passed through the flesh, and came out on the other side; but the native doctor states that he came to the hospital on the second of April, and that he probed the wounds, and they did not communicate. I think that Govind Singh is more likely

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to have the correct version of the story ; but still it is a doubtful matter. If it were one wound, which passed through the arm, it must have been given with very great force, and would have induced a belief that the intention was to murder. There was a wound on the body across the ribs ; it was slight, but had it been parallel with the ribs, and given with force, it might have endangered life. It is uncertain how severe the wounds were, and the instrument which was used has not been found, and there was no previous malice or enmity, and a doubt exists whether the prisoner intended to commit murder or not ; and I give him the benefit of the doubt. I think it proper to remark that in hospitals it is customary to keep memoranda of the case of each convict who is sent to the hospital, but not of wounded men who are not convicts, though the latter are the more important cases, and that the want of such a diary is often felt in trying sessions cases."

Sentence passed by the lower court.—Five (5) years' imprisonment, with labor.

Remarks by the Nizamut Adawlut.—(Present: Mr. R. H. Mytton).—"The prisoner appeals, asserting that he has been at enmity with Govind Singh from before, and that one day having words with him, he got up a false charge of stabbing against him.

"The stabbing is clearly established not to be false ; and the first part of the prisoner's statement is rather against him, than in his favor.

"I see no reason to interfere with the sentence."

PRESENT :

J. R. COLVIN, Esq., Judge.

A. J. M. MILLS, Esq., *Officiating Judge.*

MUSST. ZEERA AND GOVERNMENT

versus

HURKOO KULWAR (No. 7), MUSST. SUKPUTTEEA
(No. 8) AND DOMAH KULWAR (No. 9).

CRIME CHARGED.—No. 7, theft of ornaments valued at rupees 136, attended with wilful murder of Holas Kulwar and his wife Musst. Ojmessea; Nos. 8 and 9, knowingly receiving the stolen property.

Committing Officer, Mr. A. A. Swinton, magistrate of Shahabad.

Tried before Mr. W. Tayler, sessions judge of Shahabad, on the 22nd July 1852.

Remarks by the sessions judge.—“The facts of the case as established on the record, are briefly as detailed below.

“At midnight, on the 31st May 1852, the darogah of Arrah, in consequence of a report from the *gorail* of Ektearpore, (a village in the immediate neighbourhood of the town,) proceeded to the house of the deceased Holas Kulwar.

“On reaching the spot and entering the house, Holas Kulwar and his wife were seen stretched dead on the ground; a dark mark as of a rope was observed on their necks.

“One Ojagur Kulwar, a neighbour of the deceased, on being questioned, stated before the darogah that a Kulwar, whom he described as of middling size and fair complexion, and apparently about twenty-five years’ old, had come to Holas Kulwar’s house the day before; that he had seen Holas Kulwar’s wife wash his feet and give him food, and heard the stranger say, ‘Oh! aunt, I have brought the medicine you asked for; it will cure your pain in the loins, and though it will stupify you, there is no fear’; that the Kulwar afterwards cooked some rice and dall at the house, after which he (witness) went to his field, and returning in the evening discovered that the two old people had died, the Kulwar ran away, and certain jewels, which Holas’ wife was in the habit of wearing, were carried off. Several other witnesses depose to the same effect.

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The sessions judge found the crime of theft from the person of the deceased after administering drugs, which caused insensibility, but of which the distinct character was not shown, established against the prisoner Hurkoo. The court, being of opinion that the confessions should be taken together, and, like other evidence, judged of upon their own tenor and probabilities; convicted the prisoner of being an ac-

complice in the murder of deceased persons and robbing them of their property, and sentenced him to imprisonment for life in transportation. Giving the prisoner the benefit of doubts arising from the confessions, they did not think it proper to found on them an irrevocable sentence.

The court, not deeming the evidence to the identification of the articles found in the possession of the other prisoners sufficient to establish that they were the property of the deceased, released them.

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"The jemadar had in the meantime apprehended Toolsee Kulwar, the brother of the prisoner Hurkoo, and on confronting him with Ojagur, the latter identified him as the person whom he had seen at the house of the deceased.

"Several other witnesses confirmed the statement, and Toolsee was accordingly sent in to the magistrate. Here he pleaded and gave satisfactory evidence to an *alibi*, but mentioned that he had a brother who greatly resembled himself in appearance and who had been absent from his house for some days.

"This led to the apprehension of the prisoner Hurkoo (No. 7), Toolsee's brother.

"When arrested, he confessed distinctly at the thanna that he had himself administered certain intoxicating drugs to the ill-fated couple, and that when they were in a state of insensibility he had strangled them and then stolen their property. In this confession he stated that Toolsee, his brother, accompanied him to Holas' house.

"Before the magistrate he repeated this confession as far as regards the administering the drugs, but so far varied from his former statement in respect to the strangulation, as to say that he himself went to sleep, after the deceased had become insensible, and that while he slept, the prisoner No. 8, Musst. Sukputtea, who, he says, was with him, and had helped to administer the drugs, strangled the old man and woman in some way, while he slept; he admits, however, having joined her in carrying off the jewels, but denies altogether the participation of Toolsee.

"All the witnesses adhered before the magistrate to the statement previously made in the Mofussil, and deposed to the identity of Toolsee Kulwar as the man they had seen at the house; one only, Jewar Kando, on seeing both the brothers, Toolsee and Hurkoo together in the magistrate's court, retracted his statement, and said that on closer examination he perceived that Hurkoo was the man. In this statement he persisted before this court, and with every appearance of truth.

"This is a remarkable, but not, to my mind, a perplexing or at all an unintelligible circumstance, nor (however it may be considered to affect the legal sufficiency of the evidence on this particular point) does it in the slightest degree tend to weaken my belief in the truth of the prisoner Hurkoo's confession, as given before the magistrate.

"It appears to me very evident that after the darogah had obtained a clue to the perpetration of this foul and inhuman murder, and had, in consequence, apprehended Hurkoo's brother Toolsee, as answering the description given by the witnesses Ojagur and the others, these witnesses, when they saw Toolsee, who is in complexion and stature very like his brother Hurkoo, at once, in the belief that the darogah had seized the real

criminal, and probably in some measure instigated by him, deposed to his identity.

"It is notorious how little reliance is to be placed on the alleged personal recognition by native witnesses, and how easily they are induced to support the other evidence in a case, especially when they believe it to be true, by professing to have identified the party or parties concerned.

"Having once, under the above conviction, sworn to the identity of Toolsee, they would naturally, under the mistaken idea of the necessity of consistency, adhere to their former statement.

"The fear of being involved in a contradiction and its possible consequences, would necessarily operate strongly to deter them from retracting their former statements, even had the first statement been *bond fide* made under a mistaken idea of the person's identity, which was rectified on the sight of the real criminal.

"In this case then, this contradictory evidence, which might have been, under other circumstances, fatal to the prosecution, does not, in my apprehension, tend to shake it in the least, though the case is deprived of the direct corroborative proof which it would otherwise have received, had such untoward error not been made.

"I discredit the genuineness of that portion of the prisoner Hurkoo's Mofussil confession in which he states, or is made to state, that Toolsee went with him to the house of the deceased.

"I have a very strong impression that the darogah, having in the first instance, believed that Toolsee was the man, and in all probability influenced, at least in some measure, the evidence to his recognition, found himself, on receiving Hurkoo's confession, in somewhat of a dilemma, and therefore, for the purpose of maintaining conformity with the evidence, introduced the assertion of Toolsee's participation.

"Setting aside, then, the evidence of all the witnesses who adhere to the statement as to the identity of Toolsee as unavailing for the conviction of the prisoner Hurkoo (though when carefully weighed and analysed, it is not destitute of corroborative virtue, spite of the curious difference of person,) there is still ample proof of the prisoner Hurkoo's guilt.

"His voluntary confession before the magistrate is duly attested, and is in entire conformity with the facts of the case. In this confession he admits having gone to the house of the aged couple, who are his uncle and aunt; to having given them each a pill of some stupefying drug, which reduced them both to a state of insensibility, and finding (after waking from a nap which he professes to have taken in the house after they became insensible) that they were both dead, he took the silver ornaments which the woman wore upon her person and carried them off, absconding afterwards himself.

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"That he himself murdered them, either alone or with the assistance of others, I have little moral doubt, and his cowardly attempt to throw the entire guilt upon the woman Sukputteea, only adds, if aught can add, to the enormity of his guilt.

"But the legal evidence to the actual murder is unfortunately deficient, death having been caused by the strangulation. The chain of evidence fails at this particular point, and as the prisoner's confession is the only direct evidence on which his guilt rests, it must be taken as it stands, and thus he is convicted in my opinion only of administering the drugs and thereby causing stupefaction and then robbing the dead bodies.

"With regard to the nature of the drugs used, I regret to state that the evidence is very unsatisfactory; the civil surgeon contented himself with a mere inspection of the food sent in, as well as of that taken from the stomach of the deceased persons, without subjecting either to chemical analysis.

"This is much to be regretted, and the magistrate should not, I think, have been satisfied with such imperfect information in an important case like the present. He should, I conceive, have demanded a careful analysis of the food, and, if necessary, have forwarded a portion to the chemical examiner in Calcutta.

"The absence of all accurate information on this point leaves me in some uncertainty as to the sentence to be awarded.

"Construction No. 1324 has ruled that the provisions of Clause 1, Section VIII. Regulation XVII. of 1817, (which is the only direct law under which such cases have hitherto been tried,) are not applicable to cases of administering intoxicating drugs and theft.

"Had the indictment in this case been laid on the charge of administering drugs (whether poisonous or intoxicating), and satisfactory proof of the nature of the drugs been wanting, the charge could not perhaps have been sustained; but the commitment in this case is 'for theft accompanied with wilful murder.' The crime established against the prisoner Hurkoo, on his own confession, is theft from the persons of the deceased, after administering drugs which caused insensibility, but of which the distinct character (*i. e.*, whether poisonous or only stupefying,) is not shown.

"That they were the latter at all events, is shown by the effects produced; that they were not the former may perhaps be gathered from the strangulation; but again the intention to murder or facilitate the murder by other means may likewise be inferred from the murder itself and the subsequent robbery.

"Under this view of the case, although competent perhaps to pass sentence myself, yet as I find that even in cases where death did not ensue, prisoners convicted of administering deleterious drugs and robbing the drugged person while insensi-

ble, have been imprisoned for life ; and again where the intention appeared on the trial only to have been to produce temporary insensibility (though death ensued), the same sentence has been passed, I think it right to transmit the proceedings in this case for the orders of the court, and to recommend, with reference to all the circumstances of the case, and the cold-blooded and inhuman character of the crime, the relationship of the prisoner to the deceased, and the age and defenceless condition of the wretched victims, that the prisoner Hurkoo be imprisoned for life.

"There is also another ground for the reference, inasmuch as I cannot entirely agree with the *futwa* which convicts the prisoner of administering intoxicating drugs and theft with murder* in some way or other. The actual murder, as I have before stated, I do not consider proved against the prisoner.

"The prisoners Nos. 8 and 9 are charged with knowingly receiving the stolen property.

"A silver ball was discovered in the house of prisoner No. 8, a large silver armlet in the house of prisoner No. 9.

"These are identified by the witnesses for the prosecution, as the property of the deceased, and when shown to the prisoner Hurkoo were recognised by him as part of the things he had taken from the deceased Musst. Ojmesseea and given to prisoner No. 8.

"Prisoner No. 8 claims the silver ball, and adduces four witnesses in support of her claim, but they deny all knowledge of the article.

"Prisoner No. 9 pleads that the armlet belongs to his wife, and that the prisoner Hurkoo implicated him out of malice, being annoyed with him for having, as a member of a *punchayt*, assisted in expelling him (the prisoner) from his caste.

"He adduced six witnesses before the magistrate to prove his property in the armlet, but they were unable to speak to its identity.

"Five others produced for the first time before this court, depose to having seen the armlet on the arm of the prisoner's wife.

"Three witnesses depose to the plea of enmity and the expulsion of the prisoner Hurkoo from his caste.

"As to the identity of the armlet, I consider that the evidence for the prosecution preponderates.

"The fact of the prisoner Hurkoo having been expelled from his caste and of Domah having formed one of the *punchayt*

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* ' *Kul-i-mootluk*, i. e., murder not comprised in the five species described in the law.'

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others.

who determined on his expulsion, is not sufficient to account for Hurkoo having at such a crisis accused him of having the stolen property; such an idea of vengeance would scarcely enter the head of one who had just been apprehended on so serious a charge. All the witnesses for the prosecution speak to the deceased woman's wearing an armlet of this kind, and to its having been carried off when they saw the body. It is also a curious coincidence, strongly corroborating the evidence, that this particular species of ornament should be discovered, as it was and is admitted to have been, concealed in Domah's house.

"It is also specially to be observed that the silversmith from whom the prisoner professes to have purchased the ornament was unable to identify it.

"This appears to me fatal to the defence. If it had been true, the maker, beyond all other men, must have been able to identify it.

"The evidence of the rest is most unsatisfactory and in my opinion evidently tutored for the occasion.

"The fact of the first three witnesses produced and the maker of the ornament failing to identify the article, tends to throw the greatest suspicion upon the evidence of the rest.

"I have sentenced prisoners Nos. 8 and 9, to seven (7) years' imprisonment, with labor in irons, subject to the court's approval."

Remarks by the Nizamut Adawlut, recorded on the 29th September 1852.—(Present: Messrs. Colvin and Mills.)—"The facts of the case as established by the evidence are fully and accurately detailed in the sessions judge's report.

"The evidence of the medical officer, to the death of the deceased persons having been caused by strangulation, is distinct and conclusive. It is to be regretted that the contents of the stomachs and the cooked rice found in the house were not analyzed. Though the property of the drug used is not therefore known, there is no room to doubt the fact of the deceased having been, as admitted by the prisoner Hurkoo, first drugged. The evidence of the neighbours as to the identity of Toolsee, the brother of Hurkoo, as the man they had seen at the house, and who told them that he had brought medicine for the deceased, is properly set aside; but there is no reason whatever to question its credibility as regards other points, such as their having seen a *stranger* there, and having heard from him that he had brought medicine to administer to the deceased persons.

"Toolsee stated that his brother resembled him in appearance: upon this a search was made for him, but he was nowhere to be found. On the 22nd of June he was accidentally seen by a burkundauz as he was passing along the road, some four *coss* from his residence, and was apprehended and taken to the magistrate,

who sent him to the darogah. To the darogah he made on the same day a full and explicit confession : he admitted that he had administered certain stupefying drugs to the unfortunate couple ; had himself strangled them when they were in a state of unconsciousness, and had carried off the jewels which the old woman wore, and which he stated he had given to the prisoner No. 8. He further added that Toolsee was his accomplice. On the following day he confessed before the magistrate ; in this confession he denies that Toolsee accompanied him, but implicates the prisoner No. 8, insinuating that she strangled the old man and woman while he was asleep. Supposing these confessions to have been freely and voluntarily made, we cannot concur with the sessions judge in convicting the prisoner ' only of administering drugs and ' thereby causing stupefaction and then robbing the dead bodies.' The confessions must be taken together ; we must judge of them like other evidence upon their own tenor and probabilities, and by all the circumstances of the case ; and we think that the only reasonable inference to be formed from them is, that he was, at the least, an accomplice in the murder of the deceased persons, and in robbing them of their property.

" But before passing final orders as to this prisoner, we direct the sessions judge to call for and submit to the court an explanation from the magistrate in regard to his sending the prisoner to the darogah when he was first brought to him ; he should state why he did so, and whether, before so sending him, he questioned him himself, or caused him to be questioned by others, as to his guilt or innocence, and what answer he gave.

" As regards the prisoners Nos. 8 and 9, in whose possession two articles of the stolen property were found, viz., a small silver ball or button weighing three and a half annas, in the house of No. 8, and a silver armlet in the house of No. 9, we are of opinion that the evidence to the identification of the articles is insufficient to establish that they were the property of the deceased. They are articles which might be found in many houses, and are not such as can be safely held capable of recognition by persons, who have only seen the deceased woman wearing them. The ball or button is stated to be a part of either a *huslee* or of an armlet, and is even less capable of recognition than the armlet found in the house of the prisoner No. 9, and to the identity of this latter ornament, as belonging to the prisoner No. 9, several witnesses depose. Not satisfied with the evidence against these two prisoners, we direct their release*."

With reference to the above remarks, as regards the prisoner Hurkoo, the following explanation, dated 6th October 1852, was submitted by the magistrate of Shahabad ;—

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* Orders were accordingly issued for their release on the 29th September 1852.

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"The prisoner Hurkoo, to the best of my recollection, was brought to my house by a burkundauz; being engaged at the time, I ordered him to be taken to the darogah to be *challaned* in due form. I did not put any questions to him at the time."

Final remarks by the Nizamut Adawlut.—(Present: Messrs. J. R. Colvin and A. J. M. Mills,.)—dated 12th October, 1852.—

"The magistrate states that the prisoner was brought to his house, he believes, by a burkundauz, but being engaged at the time, he put no questions to him, and directed the burkundauz to take him to the darogah, in order that he might be sent up for trial in due form.

"We consider this explanation to be sufficient. The confessions both before the darogah and the magistrate have been duly proved, and we see no reason to apprehend that they have been obtained by improper means. In that before the magistrate, the prisoner admits his guilt as to everything but the actual strangulation of the two murdered persons. The evidence as regards the identity of the prisoner with the Kulwar, who was seen at the house of the deceased couple on the day of the murder, and who was heard to say that he had brought medicine for them, is contradictory. It is very probable that the witnesses mistook the prisoner's brother for the prisoner, and have, as suggested by the judge, for consistency's sake, adhered to the statement. The confessions are thus deprived of a strong corroborative fact; and giving the prisoner the benefit of the doubts arising therefrom, we do not think it would be proper to found on them an irrevocable sentence, though we have certainly no grounds for rejecting them altogether. We therefore convict the prisoner Hurkoo Kulwar, of being an accomplice in the murder of the deceased and of robbing them of their property, and sentence him to imprisonment for life in transportation."

PRESENT :

R. H. MYTTON, Esq., *Officiating Judge.*

GOVERNMENT

versus

BISHNOO MUNGUL (No. 1), SEEDUL KHAN (No. 2)
SREDUL MEEAH (No. 3) AND SIEIKH ACHOO (No. 4).

CRIME CHARGED.—1st count, Nos. 1 to 4, forgery, in having prepared a false *kuboolcut*, dated 28th Bhadoon 1257; 2nd count, No. 1, knowingly uttering the false *kuboolcut*, dated 28th Bhadoon 1257 B. S.; 3rd count, subornation of perjury as respects the prisoners Nos. 2, 3 and 4; 4th count, Nos. 2, 3 and 4, perjury, in having on the 20th May 1851, deposed, under a solemn declaration taken instead of an oath, before Mr. T. P. Larkins, assistant collector of Sylhet, that the prisoner Khoshal Chung gave the *kuboolcut* in the month of Bhadoon, dated 27th for 28th in 1257 B. S., about four *ghurries* remaining of the day, in mouza Dhopahgamareah, pergunnah Pertabghur, such statement being false, and having been intentionally and deliberately made on a point material to the issue of the case; and 5th count, Nos. 1 to 4, privy to the above crime.

CRIME ESTABLISHED.—No. 1, forgery, knowingly uttering a forged *kuboolcut* and subornation of perjury, and Nos. 2 to 4, perjury and aiding in the knowingly uttering a forged *kuboolcut*.

Committing Officer, Mr. W. B. Buckle, magistrate of Sylhet.

Tried before Mr. F. Skipwith, sessions judge of Sylhet, on the 20th August 1852.

Remarks by the sessions judge.—“The prisoner No. 1, who is the gomashita of Ruttun Munnee, treasurer of the collector of Sylhet, instituted a suit for rent against Khoshal Chung. On the 19th May 1851, he filed a *kuboolcut*, dated the 28th Bhadoon 1257, and produced in the assistant collector's court, the prisoners Nos. 2, 3 and 4, who knowingly and deliberately swore to the execution of it.

“Khoshal Chung on the 5th June appeared and denied all knowledge of the *kuboolcut*, and on the 16th filed a petition, stating that he had discovered that he was on the date in question in attendance upon the court of the principal sudder ameen, and that he was so from the 27th Bhadoon to the 5th Assin.

“This fact is most clearly established by the foudjaree nazir's books and Khoshal's deposition, and is not denied by the prisoner.

“Bishnoo (No. 1) admits that he wrote the *kuboolcut*, but urges that he by mistake wrote 18th instead of 28th, and he called several witnesses to prove it, but they signally failed.

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Sentence of
seven years'
imprisonment
for forgery,
and of five
years' for
perjury, con-
firmed.

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"That it was no mistake is proved by the papers of the summary case. On the 5th June Khoshal Chung filed an answer, denying all knowledge of the *kuboolcut*, and on the 7th a petition was filed on behalf of Ruttun Munnee, saying the claim was quite correct, but that a mistake had been made in the place of residence of the prisoner. On the 16th June Khoshal brought the forgery to the notice of the deputy collector; and on the 12th July the parties filed a *solehnama*.

"I have added the punishment of banishment to the prisoner No. 1, because the crime of forging *kuboolcuts* and producing false evidence is, I fear, very prevalent in this district, and because he has many friends here who will doubtless contrive to lighten his punishment if he remain in this district.

"The prisoners Nos. 2, 3 and 4 not only distinctly swore that the *kuboolcut* was executed on the 28th, but named the hour of the day when it was given."

Sentence passed by the lower court.—No. 1, seven (7) years' imprisonment, with labor in irons, in banishment, and Nos. 2 to 4, each, five (5) years' imprisonment, with labor in irons.

Remarks by the Nizamut Adawlut.—(Present: Mr. R. H. Mytton).—"Mr. Fagan has appeared for the appellants and Baboo Sumbhoonath Pundit for Government. It is pleaded for the appellants that Khoshal Chung has in his defence to the collector and in the *solehnama* of the Regulation VII. suit, and in his deposition to the magistrate and sessions judge, admitted giving a *kuboolcut*, and that the fact of his giving one on the 18th Bhadoon is proved by the evidence of Ameer Mahomed Nukky, and Sahib Ram. On reference to the record, it appears that Khoshal positively denied giving any *kuboolcut* at any time to the plaintiffs in the summary suit. He subsequently deposed that he gave one three years ago; that *kuboolcut* could not be the one now before the court. The first witness for the defence states that he gave a *kuboolcut*, and Khoshal Chung another, but when, he cannot say. The second gives a different name, as that of his father, in the sessions court, than the Ameer examined in the *foujdaree*. This excites suspicion. The last witness does speak positively to the fact of Khoshal giving a *kuboolcut* with other *ryots* on the 18th Bhadoon; but those *kuboolcuts* have not been produced. No register of *kuboolcuts* has been filed to corroborate the assertion; and the defence therefore is very weakly supported. There is no reason to interfere with the sentence."

PRESENT :

J. R. COLVIN, Esq., *Judge.*

A. J. M. MILLS, Esq., *Officiating Judge.*

GOVERNMENT

versus

GOLAM DOSS, THUG JEMADAR, ALIAS GOUR DOSS.

1852.

October 13

Case of
GOLAM DOSS,
THUG JEMADAR, *alias*
GOUR DOSS.

CRIME CHARGED.—*First indictment.*—1st count, wilful murder of Sartuck Haree and Kasee Mochee; 2nd count, participating in the property acquired by plunder after the murder; and 3rd count, being a thug by profession, and belonging to a gang of thugs. *Second indictment.*—1st count, murder of two Brahmins at Paier, and plunder of their property afterwards; 2nd count, participation in the property so acquired; and 3rd count, being a thug by profession and belonging to a gang of thugs.

Committing Officer, Lieutenant C. H. Keighly, Assistant General Superintendent, for the Suppression of Thuggee and Dacoity at Midnapore.

Tried before Mr. W. Luke, sessions judge of Midnapore, on the 12th of September 1852.

Remarks by the sessions judge.—“This is a supplementary trial to that held in 1838, in which other parties concerned as principals or accomplices in the same crime as that of which the prisoner is accused, were convicted and sentenced.

“The prisoner is arraigned on three counts,—with wilful murder, with participating in property acquired by that murder, and with being a thug by profession. He pleads ‘guilty’ in this court to all three, with this exception, that he denies he was the person who actually strangled Sartuck Haree and Kasee Mochee, intending it to be inferred therefrom that he was present at the murder, though not actually the perpetrator of the deed. He made a full confession of this and many other murders, in which he has been concerned, before the Assistant Superintendent, which carry with them every appearance of truth, and are fully corroborated by the evidence of the witnesses.

“Prawnbhuree Chatterjee identifies the prisoner as having been concerned with him in the Bechoolee Berhampore murder, and the truth of his evidence is borne out by that recorded in September 1837, when he was admitted as an approver. Other witnesses, thug approvers, identify him as a thug leader; and their testimony is likewise corroborated by that given in 1838 and 1840. There can be no collusion, as the prisoner was at large when denounced, and has till the present time successfully evaded every attempt to arrest him.

Imprisonment for life in transportation, is the sentence prescribed only for the general offence of belonging to a gang of thugs, not for specific acts of murder by thuggee; but the prisoner, although convicted both of the general offence and of two cases of murder, was sentenced only to transportation for life; his associates in crime having been so sentenced, and the murders being of old date.

The sessions judge’s recommendation that the prisoner should be excused, transportation on account of advanced age set aside.

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Case of
GOLAM DOSS,
THUG JEMADAR,
alias
GOUR DOSS.

"The assessors declare him guilty on the first charge as an accomplice in the murder of Haree and Kasee Mochee, and guilty also of the second and third charges. I concur in this finding.

"In another indictment subsequent to that held in 1838, No. 82, the prisoner is charged with murder; *secondly*, with receiving stolen property, knowing it to have been obtained by murder; and *thirdly*, with being a thug by profession. The second is made a distinct charge, as it pertains to a separate murder, committed on the same expedition though not at the same time in which the crime alluded to was committed. The prisoner confesses to having been an accomplice in the murder of two Brahmins at Paier, and to the other charges on which he is arraigned, and his confessions are fully corroborated by the evidence of the witnesses.

"The assessors declare the prisoner guilty on the first charge, of aiding and abetting in the murder of two Brahmins, and of the second and third charges, in which finding I concur: and I accordingly recommend that the prisoner be sentenced to perpetual imprisonment, in transportation.

"Having recommended the sentence which the law requires, I would beg permission to draw the attention of the court to the fact of the prisoner's great age, seventy-five years, and of his physical infirmities, which disable him from walking without the aid of a stick. In the common course of nature he can survive but a few years longer; and his sentence might, in my opinion, be safely commuted to imprisonment for life, in the jail at Allipore."

Remarks by the Nizamut Adawlut.—(Present: Messrs. J. R. Colvin and A. J. M. Mills.)—"The prisoner has been a fugitive from justice since 1836 or 1837. He was apprehended on the 26th of May 1852 at the indication of Isser Hazra, *goinda*. He confessed before the Superintendent of Thuggee, and gave a narrative of the different expeditions, by land and by water, in which he took a part. It seems that he has followed the profession of thuggee since he was twenty-five years old (he is now seventy-five), and is mentioned in the statement of the approvers as a noted leader of thugs.

"He is charged with two murders, and on a third distinct count, with 'being a thug by profession and belonging to a gang of thugs.'

"He is convicted in two cases of murder by thuggee, in the first case as an accomplice, in the second as an aider and abettor, and he is also convicted of belonging to a gang of thugs, within the meaning of Act XXX. of 1836.

"The first case of murder is that of Sartuck Haree and Kasee Moochee, on the 14th of November 1830. It appears that Chencee Bass Dome, and Muthoor Bagdee were apprehended

by the police on suspicion of thuggee, on 23rd of May 1836. They and others, who made their escape, were proceeding on a thuggee expedition in a boat when they were arrested. They were recognized as thugs by the approvers; and Puran Hurree Chatterjea, on the 18th of September 1837, deposed, that they were concerned with him in the murder of two travellers, who were returning from Moorshedabad to the Baswah silk factory, near a tank; that the name of one of the travellers was Kasee; that the money robbed belonged to one Sandial; and that they threw the bodies into the tank. Inquiries were made, and it was ascertained that Sartuck Haree and Kasee Moochee had taken to Moorshedabad several corahs of silk belonging to merchants of the Baswah Arungs, and that they were returning with the proceeds of the sale of the corahs to Baswah, and were murdered on the road. Their bodies were not found. Mothoor Bagdee, and Chenee Bass were convicted of this murder on the evidence of Puran Hurree Chatterjea, and Buddun Huldar, *goidas*, and sentenced to transportation for life; and the records of that trial show that the prisoner was mentioned as the leader of the gang who committed the murder.

"At the trial the approver, Puran Hurree Chatterjea, has deposed to the prisoner being the leader of the gang, and to his being present at the murder of the individuals above-mentioned, and the approvers, Naffer Sircar, Kasee Bukshee and Bhowanny Holdar, have recognized him as a thug leader, and state they had often been engaged with him in thuggee expeditions. The heirs of the deceased persons speak to the fact of their relatives going to Moorshedabad at the time stated, and never having since been heard of. The prisoner pleaded 'guilty,' stating that he as well as the witnesses had told nothing but what was true. The proof against the prisoner is complete, and we concur in the conviction.

"The second case is the murder of two Brahmins near Paier in Beerbhoom in Jeyt 1239, and the receiving of stolen property, knowing it to have been obtained by murder. The second is a distinct charge, and should have formed the subject of a separate trial.

"The prisoner pleaded 'guilty' to both charges. It appears that Sunkur Sircar and others were seized at Barh, near Patna, in 1836, on a thuggee expedition by water, and Isser Chunder Hazra and Gunga Haree Mookerjea turned approvers, and stated that they were concerned in the murder of two individuals in the year 1239, near a tank by the road side on the east plain of Paier. On reference to the records of the Beerbhoom court, it was ascertained that the bodies of two persons were found in the tank called Kazee Pookur at the time and place indicated, and it was then suspected that they had been murdered. On the

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evidence of the approvers, corroborated by the above facts, Sunkur Sircar and others were transported for life, and Golam Doss, prisoner, was then denounced as present at the murder.

" Isser Hazra has at the trial deposed to the same effect, and recognized the prisoner as a leader of thugs. Nuffer Sircar, Kasee Bukshee, and Suroop Dome, who were made approvers in 1840, and then named the prisoner, have also spoken to the identity of the prisoner.

" The guilt of the prisoner is clearly established.

" We have had some doubt, as the prisoner is shown to have been an active leader of thug gangs, and to have been at least an accomplice, and in all reasonable probability a principal, in the two murders above referred to, whether he ought not to be capitally sentenced. The sessions judge remarks that he recommends *the sentence which the law requires, viz.*, imprisonment for life, in transportation. But this is the sentence prescribed only for the general offence of belonging to a gang of thugs, not for specific acts of murder by thuggee, such as are distinctly established against the prisoner. As, however, all the other parties, who were convicted of the same acts of murder were either made approvers or were sentenced only to transportation, and as the murders were of a long bygone date, we think that the life of the prisoner may be spared; and we direct accordingly that, on conviction, both of the general offence, and of the two cases of murder, he be sentenced to transportation for life. The sessions judge has recommended that the imprisonment for life should be in the jail at Allipore, but we see no sufficient ground, considering the prominent part he took in the murderous thug practices, for exempting him, on the ground only of his age, from transportation."

PRESENT :

A. J. M. MILLS, }
AND } Esqrs., *Officiating Judges.*
R. H. MYTTON, }

GOVERNMENT AND RAMLOCHUN SHAH

versus

COLLY KANTH SHAH.

CRIME CHARGED.—1st count, having wilfully murdered with a sword Myaram Shah, Musst. Aluckmunee, and a female infant, aged about six weeks, and severely wounded Ramlochun, the prosecutor, Nuddyarchand Shah, Musst. Omerto, Musst. Oostomy, Musst. Rashmunee and Pretima Bewa, with the intention of murdering them, the said acts being all perpetrated by him, the prisoner, in an attempt to rob the house of the deceased Myaram ; 2nd count, having wilfully murdered with a sword Myaram Shah, the deceased, by whom he (the prisoner,) had been seized while in the act of forcing the lock of a chest with intention of stealing money and goods therefrom ; 3rd count, having slain Musst. Aluckmunee and a female infant aged about six weeks, and having severely wounded Nuddyarchand Shah, Musst. Omerto, Musst. Oostomy, Musst. Rashmunee and Musst. Pretima, the said acts being all perpetrated by the prisoner while engaged in wilfully murdering Myaram Shah ; and 4th count, having severely wounded Ramlochun Shah, prosecutor, with intent to kill him.

Committing Officer, Mr. J. S. Spankie, assistant, exercising the powers of a joint magistrate of Dacca.

Tried before Mr. C. T. Davidson, sessions judge of Dacca, on the 15th September 1852.

Remarks by the sessions judge.—“ This is an extraordinary case.—The prosecutor and the prisoner are nearly connected by marriage, having married two sisters. It appears that on Friday, the 16th of July last, the prisoner, who was on his way to the sudder station of Furreedpore, put up at prosecutor's house, and remained with him eight days. On Saturday, the 24th idem, Komul Shah and Dagoo Shah, the prosecutor's partners in trade, came to his house in their boat, bringing with them the sum of rupees 232, proceeds of sale of mustard seed, which was, in the presence of the prisoner, locked up in a chest in prosecutor's northern house, and the prisoner slept that night on the chest. The prosecutor's sister, Musst. Pretima, his father, Myaram Shah, and his wife, Rashmunee, with their six children (two boys and four girls) all slept in the same house. The

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October 16.

Case of
COLLY KANTH
SHAH.

Murder of
three persons
and wounding
of six others.
Sentence
death.

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prosecutor himself occupied the southern, and his cousin, Motrakanth Shah, the western house. At about 10 o'clock, he heard his father calling out that he was being killed; he ran to the house in which he was sleeping, and on entering heard the sounds as of blows being struck on the *mychan*. He seized the man that was so striking, and brought him to the door, and found that it was the prisoner, Colly Kanth Shah; that he had got his (prosecutor's) *kurgh* (a large heavy sharp knife, used for sacrificing buffaloes and goats, three feet in length, and weighing about four seers,) in his hand. The prisoner was about to strike him, when he seized the weapon, and got both his hands severely cut. At this time Komul Shah, Dagoo Shah (above referred to), and Doorgachurn Shah, who were sleeping in their boat at the ghaut close by, and who heard prosecutor's cries for assistance, came up to the house. They appear to have been afraid to attempt seizing the prisoner, who on seeing them threw down the *kurgh* and escaped. A light was then procured, and on prosecutor and the said Komul, Dagoo and Doorgachurn Shahs, and others, who have given evidence on the trial, going inside the house, they found Myaram and two of his daughters lying dead, and his sister, wife and three other children wounded.

"The deposition of Musst. Pretima, the sister of the deceased Myaram, goes to show that on the night of the occurrence she was aroused 'by a noise as if some one were trying to open the lock of the chest. She awoke her brother, and he got up and laid hold of the prisoner, who seized a *kurgh*, which was standing against the side of the house close to the chest, and struck him a blow with it, when he staggered back and fell upon his bedding, and the prisoner followed him and dealt him more blows. Aluckmunee and the little child who were sleeping near his bed also received blows which killed them.

"The evidence of the above witness and that of deceased's wife, Rashmunee, his son, Bhuggeerut Shah, Motrakanth Shah and Oodoychand Shah, establish the facts of the prisoner having been staying at prosecutor's house from the 15th to the 24th of July, and of his having slept on the chest, in which he had seen the money placed, on the night of the 24th idem, in the same house with the murdered and wounded persons. The statement of Bhuggeerut Shah will account for the sounds heard by prosecutor as of a person striking blows on the *mychan*.

"The evidence of the witnesses Komul Shah, Dagoo Shah and Doorgachurn Shah, shows that they, on hearing prosecutor's cries for assistance, ran up to his house from their boat at the ghaut, and saw the prisoner attempting to strike prosecutor with the *kurgh* which he laid hold of. The prisoner then threw down the *kurgh* and fled. Motrakanth Shah (witness No. 13) also recognized the prisoner as he was running off.

"All the witnesses above referred to and Oodoychand Shah (No. 14) state that immediately after the prisoner fled they got a light, and with the prosecutor entered the northern house, where Myaram Shah and his family had slept, and found him and his two daughters lying dead, and all the others, with the exception of Bhuggeerut Shah, who escaped under the *mychan*, wounded in a greater or less degree, and the *kurgh* stained with blood lying at the door of the house.

"The sub-assistant surgeon deposes to having examined the bodies of Myaram Shah, Musst. Aluckmunee, and a child of about five weeks of age, and to having 'found a deep incised wound on the right side of the head of Aluckmunee, about seven inches long, dividing the skin, muscles, and bones, a very extensive, partly incised and partly lacerated, wound across the head of the child, dividing the integuments, muscles, and bones; and a great many extensive, as well as small, incised and punctured wounds of divers depths, on different parts of the body of Myaram Shah.' He considers the wounds such as may have been inflicted with the *kurgh* before the court; but is unable, from the very decomposed state in which the bodies reached him, to state the causes of their deaths. In reply to a question as to whether the wounds he had described, were sufficiently severe and extensive to account for death, he states, that they were more than sufficient to account for the death of each individual, provided they were inflicted during life, a point on which, owing to the decomposed state of the bodies when sent for examination, he is unable to give an opinion. I need not refer particularly to that part of his evidence relating to the six wounded persons.

"The prisoner's answer before the police, which has been attested in this court by the witnesses Nos. 4 and 7, though denying the murder of Myaram and his daughters, and wounding of the other members of his family, is an admission of almost all the other circumstances of the case, as stated by the prosecutor. His plea that the house was attacked by dacoits, who killed and wounded the inmates, is not entitled to a moment's consideration. He has called no witnesses in support of his defence.

"The house in which this fearful tragedy occurred was dark at the time it was committed. There is therefore no direct positive evidence of the prisoner's having inflicted the wounds on the deceased, and his two daughters, who died therefrom, and the other six persons surviving. But the circumstances of the case, to be gathered from the evidence above detailed, added to the utter worthlessness of the defence set up, are such as to leave no doubt on my mind of the prisoner's guilt. The crime of which he has been convicted is one which no punishment short of death

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will meet. I beg therefore, in concurrence with the *futwa* of the law officer, to recommend a capital sentence."

Remarks by the Nizamut Adawlut.—(Present: Messrs. A. J. M. Mills and R. H. Mytton.)—MR. R. H. MYTTON.—"This, as the sessions judge justly remarks, is an extraordinary case.

"The conduct of the prisoner after he had freed himself from the grasp of Myaram in following him to the *mychan* and cutting at him and every one in the house, instead of endeavouring to escape, is so unnatural, that *prima facie* it suggests the idea that the prisoner must have been insane. But his defences are not those of a mad man; and six witnesses, who had known him all his life, deposed in the foudaree court that he has always been perfectly sane. The conclusion is inevitable that this murder of three persons, and wounding of six others, was perpetrated by the prisoner in a fit of violent passion at being disturbed in an attempt at theft. The proof is complete.

"I convict him of wilful murder and of severe wounding, and see no reason for a sentence short of death.

"I observe that the prisoner cited several witnesses in his answer to the magistrate, whose names do not appear in the calendar. This, however, is accounted for on reference to his answer to the question put after commitment, in which he stated that he did not wish any witness to be produced at the trial on his part."

MR. A. J. M. MILLS.—"The guilt of the prisoner is clearly established. The crime committed by him is of great atrocity; and seeing no circumstances of an extenuating nature in the case, I concur with Mr. Mytton in sentencing the prisoner to suffer death."

PRESENT:

W. B. JACKSON, Esq., *Judge*.

AMASOO NUSSOO

versus

BHOOTAH (No. 4), FUZOOLLAH KHAN (No. 5), PEEAR KHAN (No. 6), BHOLLO (No. 7), PURBASIOO (No. 8), DEBAROO (No. 11), GULEE (No. 13), DHQOLAH (No. 14), BANOO (No. 16), EMAMBUX (No. 17), FUJEE (No. 18), YAR KHAN (No. 19), JHURROO (No. 20), MUZZLISH KHAN (No. 21), TOOFANOO (No. 22), BANOO SIRKAR (No. 23), KEAMOODDEEN (No. 24), MUEN KHAN (No. 25), ASRAF KHAN (No. 26), HAZAREE SINGH (No. 28), BEHAREE SINGH (No. 29), SOODAN KORANEE (No. 30), BADLAH (No. 31), SOOBUL PATWAREE (No. 32), BULYE (No. 35), GHURIB SIRDAR (No. 37), JHUPROO 2ND (No. 38), NUWAB (No. 39), KANCHEEAH (No. 40), GENTOO (No. 41), FUQEER MAHOMED (No. 42), HAZEE MAHOMED (No. 43), GEDRAH (No. 45), JABROO KHAN (No. 46), DIL MAHOMED (No. 47), MOOCHIEAR (No. 48), FOOL MAHOMED (No. 49), PONGHATOO (No. 50), MOONEEAH (No. 51), DOODBUR (No. 52), HAREE (No. 53), ATRAH (No. 54), TUN MAHOMED (No. 55), BIHELAH (No. 56) AND PEE-
RUJ KHAN (No. 57).

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In a riot attended with murder, the five most prominent assailants convicted of murder, and sentenced to transportation for life, sentence of death not passed on the ground of the possibility of error as to particular acts. The less active assailants convicted of aiding and abetting, and sentenced to five years' imprisonment, with labor and irons. Others released for want of evidence.

CRIME CHARGED.—1st count, wilful murder of Amat Bushneah, brother of the prosecutor, on 15th January 1852, corresponding with 3rd Maugh 1258 B. S.; and 2nd count, being present, aiding and abetting in the same.

Committing Officer, Mr. A. G. Macdonald, magistrate of Rungpore.

Tried before Mr. T. Wyatt, sessions judge of Rungpore, on the 31st August 1852.

Remarks by the sessions judge.—“The prosecutor (brother of the deceased Amat Bushneah, with whom he lived, an inhabitant of Katalee), states that he knew all the prisoners, except prisoners Nos. 25, 26, 32, 41, 46 and 57; that his deceased brother, Amat Bushneah, had sued in the moonsiff's court at Bhotmaree and obtained decrees against ten of the prisoners, and had applied for execution of the decrees against their property, when an ameen and two peadas (names unknown), went into the Mofussil on a Thursday morning in Maugh last, and on their coming to their house, his deceased brother, with ten others (named), having proceeded to the houses of Bhollo and

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Purbashoo (prisoners), two of the debtors, the ameen and peadas attached their property, consisting of cattle and goats, (intending to attach the property of the remaining debtors in the evening of the same day, while in the meanwhile they dined,) and since they could find no people to take charge of the cattle, they were taking them with them, when after they had gone about a quarter *coss*, they were met by six of the prisoners, *viz.*, Bhollo (No. 7), Purbashoo (No. 8), Yaroo (died) (No. 12), Dhoolah (No. 14), Woondoo (No. 15) and Banoo (No. 16), and another (Pucha), who confronted them and resisted the further progress of the cattle, &c; that the ameen and peadas then protested against their opposition, when they stood back, four of them running to the villages of Meergunge, Pathanparah, Kalkeot and Katalee, after which they saw from all sides people coming armed with clubs and *bakooas*, to the extent of four or five hundred, who surrounded and beat them on the road, about one hundred cubits to the west of Dhoolah and Bulye's houses. The ameen and peadas, not being able to endure the beating, fled with his deceased brother and the rest of his party to *Nuzee's house*, about the flight of four arrows off, prosecutor hiding himself in some jungle behind the house, whence he saw the assailants surround the house and break down the bamboo fence by which the yard was surrounded, some of them beating the deceased and forcibly bringing him out from the southern compartment into the yard, when he heard deceased beg they would not beat him, but take their bonds or money, sparing his life. Of the assailants, prosecutor distinguished the prisoners Fuzoolah (No. 5) and Emambux (No. 17) put a bamboo under deceased's back, one end of which they each held, while others held deceased's head and feet; and that in this manner they carried him to the west, the remainder of the assailants following. Meeting with a burkundauz from the thanna of Dimlah, prosecutor told him what had occurred, when the burkundauz got on a horse and accompanied prosecutor in the direction assailants had gone, when they found in the way, under a tree, the corpse of deceased with one eye knocked out, teeth broken, lips swollen, and head fractured in places, with other marks of violence. While prosecutor went home to give information, the burkundauz had the body conveyed to the zemindaree cutcherry.

" This witness was the chowkeedar of the village in which the deceased lived, and accompanied the ameen to attach. He saw at two plots of land off, the prisoners Fuzoolah (No. 5) and Emambux (No. 17) while in *Nuzee's yard*, put a bamboo under the deceased's back, each holding one end of it, Bhootah (prisoner No. 4) holding the head, and two others (unknown) the hands and feet of deceased, in which manner

No. 1, Dhunah
Chowkeedar, (of Ka-
talee.)

they carried deceased away, followed by the prisoner Bhollo, (No. 7) Soodan (No. 30) and Gentoo (No. 41) whom he recognized. Witness then saw at a short distance off the deceased thrown on the bank of the river Suce and beaten with clubs and *bakooas*, and after his legs had been tied to his waist by prisoners Nos. 4, 5 and 17, and two others (not identified), dragged and thrown into the river by them; after which they raised him when he appeared dead. The assailants then dispersed. Witness states the principals were the prisoners Nos. 4, 5 and 17, and two others he could not identify; and that prisoners Bhollo, Soodan and Gentoo were among the assailants; all these six were apprehended by the police. Witness saw the flesh taken off from the breast of deceased, a wound on the left eye, and a pierced one on the forehead.

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" This witness adds the names of the prisoners Pear Khan (No. 6) and Toofanoo (No. 22)* to those of Witness No. 2. Nos. 4, 5 and 17, named by the preceding witness, which five were all he identified, as having forcibly dragged the deceased from the southern compartment of Nuzee's house, and carried him, as before described, to the river Suce, where they put him down and beat him with clubs, and putting him under water (about knee deep,) and then raising him until he was dead. They then carried and threw his body away, the feet and hands having been tied together. Witness adds others were standing on the river side with clubs and *bakooas*.

" Identifies all the prisoners save Nos. 14, 16 and 41; states that prisoners Nos. 7 and 8, with five others, Witness No. 3. opposed the removal of the cattle, &c., calling out for assistance, when villagers assembled from various parts to the spot, deceased escaping to the house of Nuzee, whence he was dragged out and ill-treated.

" Implicates thirty-seven of the prisoners, Witness No. 4. naming Nos. 4, 5, 6, 17 and 22, as the principals.

" The evidence of this witness corresponds more or less with the testimony of Witness No. 5. the four preceding witnesses.

" In describing the maltreatment of deceased by prisoners Witness No. 6. Nos. 4, 5, 6, 17 and 22, this witness says some kicked, some struck, and some poked the deceased with a stick, put the deceased under water for about a *dund*, or twenty-four minutes, then raised and took him (then dead) and threw him into the meadow west of the river.

" The testimony of the remaining eye-witnesses, Nos. 7 to 12, implicates more or less of the prisoners, but especially Nos. 4, 5 and 17, as principals.

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"Fyz Mahomed, the native medical officer attached to the hospital, who examined the body of the deceased, Amat Bushneah, in the absence of the assistant surgeon, on leave on medical certificate, deposed that the body was sent to him for examination on the 17th January 1852, when he discovered a wound below the right eye, about the length of two fingers, and of one in breadth, and one in depth; a second wound on the right side of the head, one and a half in length, five in breadth, and two in depth; a third on the left side of the head, four in length, half in breadth, and half in depth; and a fourth above the eyebrow of the left eye, three in length, half in breadth, half in depth, the skin having been removed from the breast about the breadth of eight fingers in length extending to the throat. The wounds on the head and below the right eye as well as the wounds described above, were supposed to have been inflicted by a spear.

"The three bones on the left rib had been broken, apparently by clubs, and forced into the lungs, causing blood to collect, which caused the man's death.

"This fully confirms the evidence of the witnesses to the inquest.

Defence of prisoners. "In their defence, the prisoners allege they were not present at the crime, and adduce much evidence in support, but I do not credit it.

"The *futwa* found the prisoners Nos. 4, 5, 6, 17 and 22, as principals, guilty of the first count, subject to punishment by *deeyut*, and found the rest of the prisoners (save Banoo, No. 16,) guilty of the second count, punishable by *tazeer*.

"The *futwa* found Banoo (No. 16) 'not guilty' and entitled to his acquittal.

"I concurred in this *futwa*, and I would recommend the prisoners Nos. 4, 5, 6, 17 and 22, as having *seemingly* been the principals in this cruel murder, to imprisonment for life in transportation beyond sea, and the rest of the prisoners to five (5) years' imprisonment, with labor and irons."

Remarks by the Nizamut Adawlut.—(Present: Mr. W. B. Jackson.)—"It appears the deceased went with an ameen and two peadas to execute a moonsiff's decree against several persons, among whom were the prisoners Bhollo and Purbashoo. They had attached in execution fifty or sixty cows belonging to these two, and were carrying them away, when they were opposed, and a large number of villagers, they say four or five

hundred, coming to assist their opponents, the deceased, with the ameen and peadas, and several others who accompanied them, ran away and took refuge in the house of Nuzee. There they were followed by the rioters, who broke open Nuzee's house, struck the ameen, and drove him and the two peadas away. They then dragged the deceased out of his hiding-place and beat him severely. They then dragged him away, placing a stick under his back, two men holding each an end of it, and three others helping to carry him. These men are recognized, viz., Bhootah, Fuzoollah, Pekar Khan, Emambux and Toofanoo. From Nuzee's house they carried him some distance, the crowd following. They then threw him down and beat him again severely till he was nearly dead. They then dragged him to the river, which was near, and threw him into the water, which was knee-deep, and kept him under with a bamboo till he was dead. They then dragged him out again and carried him a short distance, and threw down and left the body in the open plain. The same five men above-mentioned are described as taking the most active part throughout, at the river as well as at Nuzee's.

"There is no count in the charge of resistance of process of the court, nor of breaking open Nuzee's house, nor of ill-treating the ameen. On these grounds there can therefore be no conviction. The charge is confined to the murder of Amat, and to aiding and abetting the same. The persons who are only proved to have opposed the ameen in carrying away the cows, cannot therefore be convicted. But those who were present aiding and abetting in the assault on deceased in Nuzee's house, and in the carrying him away, and in beating him on the river bank, and throwing him into the river, must all be considered aiding and abetting in the murder; for it was, in fact, one continued assault, terminating in the murder by drowning, for it seems the deceased showed some signs of life when thrown in.

"The evidence is sufficient to convict the prisoners Soodan, Bhollo, Banoo Sirkar, Hazeef Mahomed, Purbashoo, Beharee Singh, Hazaree Singh, Jhurroo Khan, Yar Khan, Debaroo and Dil Mahomed, of being present, aiding and abetting in the assault at Nuzee's, and to convict Beharee Singh, Hazaree Singh, Bhollo, Soodan, Badlah, Fujee and Jhurroo Khan, of aiding and abetting in the assault at the river.

"Several of the prisoners have brought forward proof in support of an *alibi*, but it is not in my opinion conclusive. I therefore convict Bhootah, Fuzoollah, Pekar Khan, Emambux and Toofanoo, of the murder, and sentence them to transportation for life, with hard labor and irons.

"I convict Soodan Koranee, Bhollo, Banoo Sirkar, Hazeef Mahomed, Purbashoo, Beharee Singh, Hazaree Singh, Jhurroo Khan, Yar Khan, Debaroo, Dil Mahomed, Badlah and Fujee,

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1852. as accomplices aiding and abetting in the murder, and sentence them to five (5) years' imprisonment, with hard labor and irons. October 16. I acquit the rest of the prisoners, as I find no sufficient proof that they were present, aiding and abetting, either at Nuzee's or at the river.
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"The five men convicted of murder are all liable to sentence of death; and the justice of such a sentence could not be impugned: but it is to be held in mind, that the attack was made without premeditation, on a sudden dispute arising out of the taking away a number of cattle in execution of a decree; that these five men were individuals among a crowd of several hundred assailants, and were actuated apparently by the excitement attending such casual riots. I think there is a distinction between such an act and a murder, planned beforehand and executed deliberately. Still the crime is murder; and I should be disposed to inflict on them the full penalty of the law, but for the consideration that the evidence to particular acts by particular individuals among a throng of assailants, is always in some degree liable to error, although there may be no reason to doubt the main fact, that all were present taking an active and prominent part in the assault. On this ground I have not passed sentence of death, but have inflicted the punishment recommended by the sessions judge."

PRESENT:

SIR R. BARLOW, BART., *Judge.*

GOVERNMENT

versus

RAM ASSIS RAI.

1852. CRIME CHARGED.—1st count, riot, attended with the culpable homicide of Manbodh and Sambodh, and severe wounding of Juggoo Aheer.
October 16. CRIME ESTABLISHED.—Riot, attended with culpable homicide and wounding of Juggoo Aheer,
Case of RAM ASSIS RAI. Committing Officer, Mr. R. J. Richardson, officiating magistrate of Sarun.
Conviction and sentence affirmed. .. Tried before Mr. C. Garstin, sessions judge of Sarun, on the 5th June 1852.

Remarks by the sessions judge.—"This is the continuation of a case of affray arising out of a dispute caused by some cattle belonging to the village of Gungajul, trespassing on the lands of their neighbours, who, as they were driving them off to the thanna, were assaulted by the Gungajul people, and so severely handled that two of them died afterwards in the hospital. The

case was referred to the Nizamut Adawlut in consequence of the judge's dissent with the *futwa* in regard to one of the prisoners then tried, by name Pultoo, and the court, coinciding with the opinion expressed by the judge, sentenced him, on the 18th September 1850, to be imprisoned for five (5) years' with labor and irons.

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"The following is an extract of the remarks made in the letter of reference, No. 169, dated 3rd September 1850, paragraphs 2 to 6 :—

" 'This riot attended with homicide and severe wounding, arose in consequence of the cattle belonging to some Rajpoots of the village Gungnjul having trespassed in the field of Manbodh and Sambodh, (deceased,) Aheers of Chittar-Chuck. The latter were in the act of driving the cattle away to the thanna to be pounded, when the Rajpoots came out, armed with various weapons, with a view of rescuing the cattle.

" 'At this juncture Manbodh was severely wounded and died of his wounds in hospital on the 4th August, (twenty-one days after the occurrence), Sambodh, also wounded, died in hospital, but was carried off by an attack of dysentery. Several others of Aheer caste (Dhunput, Juggoo, &c., witnesses in this case) received sword-cuts.

" 'The evidence convicted Hurkoo* and Rampaul* of wounding Sambodh; and Audit* and Bhurrut* of wounding the deceased Manbodh, and Pultoo and Ramaser* of wounding the witness Juggoo; the weapon used by Pultoo was a sword.

" 'Chuttoo and Dular were the *maliks* of the Aheer village, and on that account were apparently named from motives of enmity as having ordered the attack. The remaining prisoners in this trial, as well as the *maliks*, were not, however, proved by the witnesses to have taken any part in the affray, and evidence was adduced by the majority to an *alibi*, Pultoo has accordingly been convicted, and the remaining prisoners acquitted by this court.

" 'The case is referred as respects the prisoner Pultoo, whom the officer convicts of riot attended with *wilful murder* (referring to the nature of the instrument employed,) whereas I am of opinion that in the absence of any previous malice, he can be convicted only of riot, attended with *culpable homicide*, and if the court concur with me as to the nature of the crime, I would suggest a sentence of five (5) years' imprisonment, with labor in irons.'

"The prisoner now tried was named at the time as having taken an active part in the affray, but having absconded, he has only now been apprehended, and is fully identified as the person

(*Not apprehended.)

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then spoken of. In his defence he pleads that he was at the time the affray took place in the Midnapore district, and he has called three witnesses to prove this, and though they corroborate his statement, their evidence under all the facts is not such as to invalidate the strong proof against him; wherefore he has, in concurrence with the *futwa*, been convicted and sentenced, like Pultoo, to five (5) years' imprisonment, with labor and irons."

Remarks by the Nizamut Adawlut.—(Présent : Sir R. Barlow, Bart.)—"The prisoner was named by the party he wounded and by other witnesses. He absconded, and his property in consequence was attached and sold. He pleads *alibi*. His evidence is inconsistent, and quite unworthy of any trust. His appeal is rejected, and the sessions judge's sentence confirmed."

PRESENT :

W. B. JACKSON, Esq., Judge.

GOVERNMENT AND SHANEERAM MANJEE

versus

BASHEERAM MANJEE.

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Case of
BASHEERAM
MANJEE.

The prisoner, convicted of rape, sentenced to imprisonment for ten years, with labor and irons.

CRIME CHARGED.—Rape, on the person of Musst. Tirth Monee, the minor daughter of Shaneeram Manjee, prosecutor.

Committing Officer, Mr. T. B. Mactier, joint magistrate of Furreedpore, Dacca.

Tried before Mr. C. T. Davidson, sessions judge of Dacca, on the 15th September 1852.

Remarks by the sessions judge.—"The circumstances of this case are as follows:—On the 1st July last, the prosecutor's daughter, Musst. Tirth Monee, a girl of about nine years of age, went to the prisoner's house to ask his wife to accompany her to bathe: she said she would take her *hookah* first and then go. After having smoked she gave the *hookah* to prosecutor's daughter to take to the prisoner, who was sitting in front of his northern house. On her taking it to him, the prisoner took her up in his arms, carried her inside the house, and committed upon her the crime of which he stands charged.

"The only direct evidence is that of the girl herself, who was examined as a witness, and her statement is to the effect above narrated. The witness Baddolee Chung, who is a neighbour of the prisoner, states that he heard the cries of a female in the prisoner's house, and went there, and on arriving, saw the prosecutor's daughter run out crying, and the prisoner immediately followed. On his return home he saw the child, who had met her mother, standing under a tree; and he heard from the latter that the prisoner had raped her. He describes the state of the

girl as crying and trembling; her back and head covered with earth; and her clothes stained with blood. The mother of the girl states that her daughter went to bathe; that shortly after she heard a cry, which she thought was that of her daughter, in the prisoner's house, and was going towards it when she was met by her daughter, who came running from the prisoner's house crying and trembling, and told her that he had ravished her. She states that she was met by the witnesses, Baddolee and Ramkanan, under the tree, as described by the former, and showed them the state her daughter was in. She met others on her return home, to whom she also showed her daughter, and related the case. The witnesses, Ramkanan and Baroo, corroborate the above.

"The evidence of the sub-assistant surgeon goes clearly to establish the fact of the girl having been violated.

"The prisoner confesses, both before the police and the deputy magistrate, having had connexion with the girl; in the former he states with her consent, in the latter that there has been *ashnaye* between them for the last two months. Before this court he retracts his confessions, and pleads that the case has been got up against him from enmity; but has called no witnesses in support of the plea.

"The *futwa* of the law officer convicts the prisoner of having had *forcible* connexion with prosecutor's daughter. I would convict him of the crime charged, and beg to recommend a sentence of ten (10) years' imprisonment, with labor and irons, in banishment."

Remarks by the Nizamut Adawlut.—(Present: Mr. W. B. Jackson.)—"The evidence of Musst. Tirth Monee, supported by that of other witnesses, establishes the fact that the prisoner Basheeram Manjee committed a rape on the person of Musst. Tirth Monee, a girl of nine years of age. The prisoner before the magistrate admitted having had connexion with the girl; but denied that it was against her will. The evidence on this point is clear and decisive against the prisoner's plea. I convict the prisoner of rape, and sentence him to imprisonment, with hard labor and irons, for ten (10) years."

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Case of
BASHEERAM
MANJEE.

PRESENT :

W. B. JACKSON, Esq., Judge.

GOVERNMENT

versus

SALIK SINGH (No. 8), BAHALEE SINGH (No. 9),
 KARAN SINGH (No. 10), RAMDAWUN SINGH (No.
 11), GOUREESHUNKUR SINGH (No. 12), CHITNEE
 SINGH (No. 13), SHEODHAREE SINGH (No. 14) AND
 MUNGNEE SINGH (No. 15).

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Case of
 SALIK SINGH
 and others.

The prison-
 ers convicted
 of affray with
 culpable homi-
 cide, al-
 though they
 were the party
 attacked, it
 being esta-
 blished that
 they went to
 plough with
 a party ready
 to support
 them in case
 of opposition.

CRIME CHARGED.—Affray attended with the culpable homi-
 cide of Ramjeebun Rai, who died from the effects of blows
 administered by the defendants, present, and by others at large,
 and attended with the wounding of Soudagur Singh by Bahalee
 Singh and Salik Singh, present, and Ramdun and Ramchurn,
 prisoners, not yet apprehended.

Committing Officer, Mr. R. J. Richardson, officiating magis-
 trate of Sarun.

Tried before Mr. C. Garstin, sessions judge of Sarun, on the
 12th July 1852.

Remarks by the sessions judge.—“ I refer this case, because
 I dissent with the moulvee in his finding as regards the prisoners
 Karan Singh, (No. 10), Ramdawun Singh, (No. 11), Gouree-
 shunkur Singh, (No. 12), and Mungnee Singh (No. 15), whom
 he convicts of the affray charged; whilst I am of opinion under
 all the facts of the case, that they should be released.

“ The following is a short statement of the main facts of the
 case:—It appears that in mouza Jowah Bussunt, there are certain
 lands held jointly by a person named Koorkoot Singh and by
 the prisoner Bahalee Singh (No. 9), and that, whilst the former
 has given a lease of his share of them upon an advance of money
 to a man named Gobind Singh, the latter has given his to the
 prisoner Salik Singh (No. 8). It would seem that on the morn-
 ing of the 19th May last, Bahalee and his *peshgeedar* (Salik)
 both went, taking a number of people with them, to plough
 some of the lands, when Soudagur and Ramjeebun, deceased,
 (who were servants of the other *peshgeedar*, Gobind,) opposed
 them, when words arising, Bahalee (No. 9) struck Soudagur with
 a *lohbunda*, whilst Salik and others hit him with *lattees*; upon
 which Ramjeebun came up, and struck Salik (No. 8) with a *lattee*,
 and was in return knocked down by Bahalee (No. 9) and Karan
 Singh (No. 10), and then well beaten by the other prisoners com-
 mitted in this case; and, in short, was so severely handled by
 them, that he died afterwards of the injuries inflicted, in the
 hospital.

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Case of
SALIK SINGH
and others.

"The same evening the affray was reported to the police, first of all by Salik, (No. 8), and immediately after by Soudaghur, who spoke of all the prisoners tried as engaged in it, excepting Sheodharee (No. 14), Chitnee (No. 13), and the magistrate, after having completed his inquiries, &c., deeming them all guilty of having been present at it, has sent up the whole of them for trial at the sessions. He appears to think that only Soudaghur and Ramjeebun (deceased) were engaged on the one side, and all the prisoners on the other; but I must say that I do not concur in this opinion, as it is not likely that two men only could have withstood the great number of persons opposed to them; and, indeed, one of the witnesses (Sheo Koeree) for the prosecution, admits that both sides were fighting, and that some of the witnesses in the case were engaged in it, as well as the prisoners.

* "Of all the prisoners tried, Salik alone admits having been present at the fight; and he, of course, states that the other party were the aggressors, and that, as he was soon rendered insensible from the blows he received, he does not know what took place. All the others plead *alibis*, and call witnesses to prove them; but I must confess that I place little reliance on their statements, and that it is rather from my doubts as to the truth of the evidence given on behalf of the prosecution that I recommend their acquittal, than from any credence I attach to the pleas put forward for the defence.

"It will be observed that all the witnesses for the prosecution (twelve in number, including the above Sheo Koeree,) speak to the same effect and almost in the same terms of the part taken in the affray by the different prisoners, and this alone, in my opinion, is suspicious, as it is almost incredible that a number of persons witnessing a fight could speak, as these men all do, with regard to what was done by each prisoner whilst it was going on; but independent of this, it is certain that for some time ill-feeling has existed between the parties, and that so long back as March last, a charge of stealing grain was preferred by the prisoner Mungnee (No. 15) against some of the followers of Gobind, (the other *peshgeedar*) and that in that case Karan Singh (No. 10) Ramdawun Singh (No. 11) and Goureeshunkur, (No. 12), all gave evidence on his side, and that when their case was dismissed, an inquiry was made under Act IV. of 1840, as to the fact of possession; Gobind Soudaghur and Ramjeebun (the man killed in this affray) all came forward as witnesses against them. Under these circumstances it is by no means improbable that the names of Karan Singh and the rest may have been brought into the case from motives of enmity; and therefore I should be afraid to convict them in it.

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Case of
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and others.

"The moulvee acquits the prisoner Sheodharee (No. 14) and Chitnee (No. 13) of the charge preferred against them, and in this finding I agree, as it is certain that they were not named in the early part of the proceedings. He convicts Salik and Bahalee, and in this finding I also concur; and would recommend, in the event of the court being of the same opinion, that each of them be sentenced to imprisonment with labor for five (5) years. He also convicts the prisoners Karan Singh (No. 10), Ramdawun Singh (No. 11), Goureeshunkur Singh (No. 12) and Mungnee Singh (No. 15); but as I differ with him as regards these persons, it becomes my duty to refer the case for the consideration and orders of your court, and in so doing I recommend that they be released; for though there are suspicions against them, I do not think, with reference to the facts of the case, that a conviction could safely be had; and I have only to observe that I have, pending this reference, directed them all to be put on bail to await the issue of the court's orders regarding them."

Remarks by the Nizamut Adawlut.—(Present: Mr. W. B. Jackson.)—"This case is referred as regards the prisoners Karan Singh, Ramdawun Singh, Goureeshunkur Singh and Mungnee Singh, whom the sessions judge wishes to acquit, while the law officer convicts them of the crime charged. I observe that Goureeshunkur is reported dead since trial. The evidence against the three others is, in my opinion, sufficient to convict them of being present and taking an active part in the affray in which the homicide took place. Several witnesses swear they saw these three men strike the party since deceased; and the defence set up of an *alibi* is not satisfactorily proved. It is, however, to be considered in this case that Salik and Bahalee Singh were ploughing peaceably when attacked by the opposite party, and it is by no means established that they had no right to plough in the field in question. When attacked they fought; and it seems that they had a party with them ready to support them in case of opposition. Still it would be more culpable to use force in support of a wrong-doer than a party who was merely ploughing his own field. I convict the prisoners Karan Singh, Ramdawun Singh and Mungnee Singh of the crime charged, and sentence them to four (4) years' imprisonment, with a fine of rupees fifty (50) each, commutable to labor and irons."

PRESENT :

A. J. M. MILLS, Esq., *Officiating Judge.*

GOVERNMENT

versus *

MOKEEM KALASEE (No. 1), SHEIKH DOOTEEAH KALASEE (No. 2), SHEIKH NAGUR (No. 3) AND KULLEEM SIRDAR (No. 4).

CRIME CHARGED.—1st count, affray in which Pajoo Sirdar of the 1st party, and Sheikh Haran of the 2nd party, were wounded, from the effects of which wound Sheikh Haran died the same day; and 2nd count, accomplices to the same.

Committing Officer, Mr. T. B. Mactier, joint magistrate of Furreedpore, Dacca.

Tried before Mr. C. T. Davidson, sessions judge of Dacca, on the 9th September 1852.

Remarks by the sessions judge.—“ This case was referred to the court with my report, dated 20th February last, from which the following is an extract :—

“ The following are the circumstances of the case as to be gathered from the record. A dispute appears to have existed for some time past between one Bishennath Sein, the ostensible proprietor by purchase of a 4 annas share of mouza Dergaon, and Mr. Wise of Dacca, regarding the Lulleetgunge Bazar, and adjoining lands on which his (Mr. Wise's) Manikgunge indigo factory stands, the former claiming the lands and bazar as appertaining to his purchased estate, mouza Dergaon, and the latter maintaining that the land on which the bazar and factory stand is his under a *mergs* tenure. The affray took place on the 15th of August last, and on the same day information was lodged by one Arradhun, styling himself a servant of Mr. Wise, and Hurry Mohun Singh, a dependant of Bishennath Sein; the former stating that *latteals* on the part of Reedoykishen Sein (it is not quite clear that Bishennath Sein is the *real* proprietor of Dergaon) had been seizing and carrying off his master's *ryots*, and that on being remonstrated with they had assaulted and wounded Pajoo and Sheikh Jugoree (prisoners Nos. 11 and 12), and carried off one Nubbin-boonah; the latter complained that one Muddun Gangolee had, with a large body of men, attacked Bishennath Sein's cutcherry, and beaten and wounded his people; and that one of them, Sheikh Haran, was dying from the effect of the wound he had received.

“ The eye-witnesses, eight in number, depose to the affray having taken place, to the prisoners Nos. 10, 11, 12 and 13,

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October 18.

Case of MOKEEM KALASEE and others.

Two prisoners convicted of affray with homicide, and sentenced to five years' imprisonment. Two others acquitted.

1852.

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Case of
MOKEEM KA-
LAKEE and
others.

' on the part of the factory, and No. 14 on the part of Bishen-nath Sein, having been actually engaged in it, and most of them depose to Sheikh Hazaree (No. 10) having inflicted the wound which caused Sheikh Haran's death. It is shown by the evidence of the witnesses to the inquest, and the deposition of the sub-assistant surgeon, that Sheikh Haran received a wound from a *soolfee*, or some such weapon, in his right side, injuring the loin and stomach, which caused his death.'

"Seven eye-witnesses, six of whom were examined at the trial held in February last, have attended this court and been re-examined. Their evidence clearly establishes the guilt of the prisoners. The original deposition of the sub-assistant surgeon, recorded at the former trial, stating the result of his post-mortem examination of the body of Sheikh Haran, is to be found on the proceedings of the former trial. His removal to Patna precluded his being re-examined on this trial.

"The prisoners deny the charge; but the defence set up, unsupported as it is by the evidence of the witnesses called by them, fails to exculpate them.

"The case is referred in consequence of my dissent from the *futwa* of the law officer in regard to the prisoner Kulleem Sirdar, whom he exonerates on the same grounds that he recorded for the acquittal of Haran Kalasee. Those grounds, and my reasons for dissent, were recorded in paragraph 6 of my report, of which the following is a copy.

"The *futwa* justifies the conduct of Haran Kalasee, as protecting his master's property, and acquits him. From this finding I dissent; for I do not credit that part of the evidence which refers to the attack on the cutcherry. I have no doubt of the affray having occurred in its immediate vicinity; but I consider it to have arisen out of the seizure of certain *ryots* by one party, and the attempted rescue of them by the other; but even admitting it to have been shown that either party were the aggressors, it will not take the case out of the category of mutual affray (See Nizamut Reports, Volume II. page 339)."

"I would convict all the prisoners of affray attended with culpable homicide, and beg to recommend a sentence of five (5) years' imprisonment, with labor in irons. The former trial was disposed of by the superior court, on the 5th of April last, present, Mr. A. J. M. Mills."

Remarks by the Nizamut Adawlut.—(Present: Mr. A. J. M. Mills).—"In my remarks on the former trial, disposed of by me on the 5th of April, I recorded my entire concurrence in the view of the case taken by the sessions judge, in dissent from the finding of the law officer. I dealt with the case as one of mutual affray in which the zemindar's people were the aggressors. The

prisoner Kulleem is one of the zemindar's people, and is deposed to by the witnesses, consistently, in every stage of the proceeding, as the person who struck Pajoo, on the part of Mr. Wise, with a club. His conviction is good; and I sentence him to five (5) years' imprisonment, with labor and in irons.

"The evidence to the identity of Sheikh Nagur has been distinct and concurrent throughout; and I sentence him also to five (5) years' imprisonment, with labor and in irons.

"I have no confidence in the recognition of the prisoners Mokeem and Dooteeah. The witnesses were particularly questioned on this point by the darogah; and though the prisoners were well known to them, one witness only mentioned the name of Sheikh Dooteeah. Had they been recognized, their names would have been doubtless *then mentioned* by the other witnesses. The witnesses too, are persons under the influence of the zemindar; and it is therefore the more necessary to receive their evidence with much caution. Not satisfied with the proofs against Mokeem and Dooteeah, I acquit them, and direct their release."

PRESENT:

W. B. JACKSON, Esq., *Judge*.

GOVERNMENT

versus

GOKOOL (No. 1) AND MUTTRA (No. 2).

CRIME CHARGED.—1st count, issuing counterfeit coin, knowing the same to be counterfeit; 2nd count, fraud.

CRIME ESTABLISHED.—Issuing counterfeit coin, knowing the same to be counterfeit.

Committing Officer, Mr. R. J. Richardson, officiating magistrate of Sarun.

Tried before Mr. C. Garstin, sessions judge of Sarun, on the 13th August 1852.

Remarks by the sessions judge.—"The two prisoners convicted in this case (residents of Lucknow,) in the first instance, went to a woman's (Musst. Lunghee's) house in this city and asked for charity, and being refused, asked her if she would give them silver for 4 rupees worth of pice they had got. She accordingly got 4 rupees and brought them out and gave them to Gokool, who at once passed them on to two other men (their companions,) who were standing outside the door; when one of them said to him 'give back the rupees, we have no pice,' upon which he (Gokool) gave her back 3 rupees. The woman (Lunghee) then called out that she had given 4 and had only got back 3

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October 18.

Case of
MOKEEM KA-
LABEE and
others.

1852.

October 18.

Case of
GOKOOL and
another.

A party
should not be
charged simply
with fraud
without specification
of the act constituting
the fraud.

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Case of
Gokool and
another.

rupees, and laid hold of Gokool, when his companion (Muttra) tried to release him, and one of them (it is not very clear which of them it was,) bit her on the hand, inflicting a slight wound. The alarm however was given by this time, and both the prisoners were secured, though the men who had been waiting outside, got off and escaped. Both the prisoners deny their guilt, and say that having gone to the woman's house to beg, she asked them if they had any pice, when they said they had, and intended to buy a *lotah* with it, she offered to sell them one, and on this plea got their money, and in the end herself brought out the three bad (leuden) rupees, and declared that they had tried to pass them upon her. The facts of the case are however quite clear, and there is no doubt whatever of the truth of the charge, and it is more than probable that these men have come down from their own country (with others) in hopes of passing off a little bad coin. Be this as it may, however, in my opinion, the charge made against them is clearly established; and as the moulvee also convicts them both, I have, under all the facts of the case, sentenced them as noted."

Sentence passed by the lower court.—Each, three (3) years' imprisonment, with labor in irons.

Remarks by the Nizamut Adawlut.—(Present: Mr. W. B. Jackson.)—"The prisoners Gokool and Muttra are properly convicted of knowingly issuing counterfeit coin. There might have been a separate charge in this case of 'obtaining 4 rupees' from the prosecutrix fraudulently under false pretences, or by 'swindling', upon which the prisoners, under the circumstances, might also have been convicted. There is a second count in the charge of 'fraud;' but such a charge, without any attempt at specification, was useless, and no conviction could be had under it, simply because it is impossible for the prisoners to plead or make any defence against so vague an accusation. I see no reason to interfere with the sentence."

PRESENT:

SIR R. BARLOW, BART., *Judge.*

LALL RAM NARAIN SAHEE

versus.

CHUMER SINGH (No. 1) AND BYJNAUTH SINGH
(No. 2.)

CRIME CHARGED.—Severely wounding the prosecutor, with intent to do him some bodily injury.

CRIME ESTABLISHED.—Severely wounding the prosecutor, with intent to do him some bodily injury.

Committing Officer, Captain W. H. Oakes, principal assistant to Agent to Governor General, Lohurduggah, Hazareebagh.

Tried before Mr. J. Hannington, deputy commissioner of Hazareebagh, on the 11th August 1852.

Remarks by the deputy commissioner.—“To render this case more clearly intelligible, it is necessary to state some circumstances that appear in the record. The prisoner Chumer Singh holds the village of Bursidag, on a lease from the Raja of Chota Nagpore, and has sub-let it to a person named Mohiput Narain Singh, who is connected by blood with the prosecutor, to whom, as prosecutor affirms, he bears ill-will. The prisoner Chumer or his lessee, are in actual possession. But this same village of Bursidag has been let by the Thakoorain of Chandwa to one Joomun Khan, who is not in possession. The prosecutor has no ostensible connexion with the last-named parties; but the matters above-mentioned are certainly the inducement to what follows. On the 11th October last, Emam Khan, a servant of the prosecutor, acting on his behalf, and the prisoner Chumer Singh, appeared simultaneously at the police station of Baloomat. The former stated, that there had been a dance on the preceding night at the village of Malung, and that early in the morning his master, the prosecutor, who was there, had been assaulted and severely wounded by the prisoner Chumer and his son. The prisoner stated, that he and his son had been set on and wounded by the prosecutor and his attendants. The witnesses for the prosecution stated, that the prisoner Chumer Singh, the prosecutor, at the dance said, ‘this fellow has come to help Joomun; beat him’—whereupon the prisoner, aided by his sons, Byjnauth, Joynauth and Banowary, and his cousin Assa, set on the prosecutor and severely wounded him with swords. The witnesses for the defence stated, that the prosecutor, with a number of armed followers, finding the prisoner Chumer and his son Byjnauth at the dance, said ‘this is Chumer, who disobeys orders,’ whereupon the prosecutor assaulted Chumer, and in a personal struggle both

1852.

October 19.

Case of
CHUMER
SINGH and
another.

Conviction and sentence upheld, the prisoners’ defence in the sessions court, which was besides unsupported by evidence, being different from that before the committing officer.

1852.

October 19.

Case of
CHUMER
SINGH and
another.

fell down, in which plight the prosecutor's attendants, in cutting at Chumer, wounded the prosecutor. On this defence Chumer relied; but it is to be remarked, that nothing of this was mentioned by him in his first statement: he did not even say that the prosecutor had been wounded at all: he said that his son Byjnauth had been badly wounded, and that a servant named Soomeria had disappeared. The prosecutor's wounds are described by the native medical officer, who attended him, to have been extremely severe, insomuch, that he has barely escaped with his life; but he is now perfectly well. His ear is cut through and his face indelibly marked. The prisoners Chumer and Byjnauth had both slight wounds, which gave color to the statement of a mutual encounter. The evidence against the prisoners Joynauth, Banowary and Assa, was not, to my mind, satisfactory. Several of the witnesses named them all in the same order, and the first intimation of the offence was, that Chumer and his son, not his sons, had committed it. The jury found all the prisoners not guilty. I considered the prisoners Chumer and Byjnauth guilty of an aggravated assault, and the other prisoners not guilty. Believing that some provocation may have been given as stated by the witnesses for the defence, I have allowed the prisoners the benefit of it in a mitigated sentence."

Sentence passed by the lower court.—One (1) year's imprisonment, without labor or irons.

Remarks by the Nizamut Adawlut.—(Present: Sir R. Barlow, Bart.)—"I concur with the deputy commissioner in the conviction of the prisoners as recorded in column 10. The discrepancies referred to in the depositions of the witnesses by the jury, are immaterial as to the fact that the prosecutor was cut down by Chumer Singh and his son Byjnauth Singh. It is very probable that the dispute about the village Bursidag was the cause of the assault, but nothing can justify the conduct of the prisoners, at whose hands the prosecutor nearly lost his life.

"The petition of appeal merely reiterates the defence made by the prisoners before the deputy commissioner, which is altogether different from that set up in the assistant's court. The evidence in support of it is not worthy of credit."

PRESENT :

R. H. MYTTON, Esq., *Officiating Judge.*

SUMBHOO CHURN GAIN

*versus**

GOOROODOSS, ALIAS GOOROOCHURN MUNDUL (No. 1) AND JOODHISTEER MUNDUL (No. 2).

CRIME CHARGED.—1st count, Nos. 1 and 2, culpable homicide of prosecutor's uncle, Gopeenath Gain; 2nd count, accomplices in the said culpable homicide; and 3rd count, No. 2, aiding and abetting in the above crime.

CRIME ESTABLISHED.—No. 1, culpable homicide and No. 2, abetting Gooroodoss in committing an assault on Gopeenath, which assault was the cause of the death of Gopeenath.

Committing Officer, Mr. E. A. Samuells, magistrate of 24-Pergunnahs.

Tried before Mr. E. Bentall, additional sessions judge of 24-Pergunnahs, on the 6th July 1852.

Remarks by the additional sessions judge.—“On the 17th of January last, some cattle of Gooroodoss trespassed on a field of Gopeenath, and a dispute in consequence arose between them. It was close to their houses, and they live only one *russee* apart. Joodhisteer instigated and abetted Gooroodoss, who went into his house and returned with a stick, with which he struck Gopeenath and gave him a blow on the head, which caused a slight lacerated wound over the parietal bone. The prosecutor, who is the nephew of Gopeenath, went to the police, but was directed to make his complaint direct to the magistrate. Gopeenath was then brought to the sudder station; and on the 21st January he presented a petition to the magistrate, in which he accused both the prisoners; his deposition was not then taken, but he was sent to the hospital, whence he was discharged as cured on the 27th of January, as the wound had healed and he was perfectly sensible and there were no symptoms which could lead the medical officer to suppose that his brain was injured. On the 28th of January, he gave his evidence before the deputy magistrate, being supported, while it was being written and attested, and in that deposition he accused Gooroodoss and Birma, his nephew, but he did not accuse Joodhisteer. He died on the 29th of January, and his body was examined in the hospital, when a deposit of blood was found under the *dura mater* and under where the lacerated wound had been. The trunk of the body was not opened, as the injury in the head was sufficient to cause death. The medical officer is decidedly of opinion that the blow on the head was the original cause of the deposit of

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October 20.

Case of
GOOROODOSS,
alias GOOROO
CHURN MUN-
DUL, and ano-
ther.

In culpable homicide, the person who instigates the assault, held to be equally guilty as the person who strikes the blow.

1852.

October 20.

Case of
GOOROODOSS,
alias GOOROO
CHURN MUN-
DUL and ano-
ther.

blood; but he cannot state whether it commenced to take place before the man left the hospital or not. There are six witnesses who state that Gooroodoss hit the deceased man on the head with a *luttee*, but only four of them say that Joodhisteer abetted him; the other two say that they did not see him. There is no doubt in my mind about the cause of death being the injury he had received on his head; and it is clearly proved that Gooroodoss hit the blow which caused the injury to his head. Joodhisteer brought one witness to prove an *alibi*, but he could not say on what day the prisoner was absent; and although Gopeenath did not mention his name in his deposition, yet I have no doubt about his having been present and abetting the assault, which resulted in the death of Gopeenath Gain."

Sentence passed by the lower court.—No. 1, three (3) years' imprisonment, without irons, and a fine of rupees fifty (50) or labor, and No. 2, one (1) year's imprisonment, without irons, and a fine of rupees twenty (20) or labor.

Remarks by the Nizamut Adawlut.—(Present: Mr. R. H. Mytton).—"The injury on the head of the deceased was described by the surgeon as 'a very slight lacerated wound,' at the time of his admission into hospital, and after death, it was found that the skull was not fractured or injured. The blow therefore could not have been a very violent one.

"The witnesses depose that the prisoner Gooroodoss was quarrelling with the deceased, when Joodhisteer came up and cried '*mar, salah*;' on which Gooroodoss got a stick and struck him. Gooroodoss did no more, and no other act than that which Joodhisteer instigated him to do. The consequence which resulted might not have been expected by Joodhisteer; but neither may it have been expected by Gooroodoss. The guilt of Joodhisteer is certainly not less, if it is not greater, than that of Gooroodoss.

"The sentence which has been passed upon the former is a sufficient punishment for the latter also. His period of imprisonment will therefore be reduced to one (1) year with a fine of rupees twenty (20), commutable, on non-payment in two weeks, to labor."

PRESENT :

R. H. MYTTON, Esq., *Officiating Judge.*

BHOOBUN KURMOKAR

versus

SHEIKH NEELMONEE (No. 1), SHEIKH MUDHOO (No. 2), SHEIKH SADD00 (No. 3), SHUMSHERE KHAN (No. 4) AND NOBIN KURMOKAR* (No. 5).

CRIME CHARGED.—1st count, burglary on the premises of the prosecutor, Bhoobun Kurmocar; 2nd count, accomplices to the above charge; 3rd count, knowingly receiving and keeping property acquired by the said burglary.

CRIME ESTABLISHED.—Knowingly receiving and keeping stolen property.

Committing Officer, Zynooddeen Hossein, deputy magistrate of Manickgunge, Furreedpore, Dacca.

Tried before Mr. C. T. Davidson, sessions judge of Dacca, on the 19th July 1852.

Remarks by the sessions judge.—“The prisoners are charged with burglary and theft of property, valued at rupees 30-6-0; on a second count, with being accomplices in the aforesaid crime; and on a third count, with receiving stolen property, knowing the same to have been acquired by burglary. The prisoners Nos. 1, 2, 3 and 4 confess in the Mofussil and the magistrate's court, and these confessions have been duly attested before this court. The fact of the burglary having been committed in the prosecutor's house, the surrender by the prisoner of the stolen property, and its being that of the prosecutor, have been proved by the evidence of the witnesses examined. The prisoners Nos. 1, 2, 3 and 4 deny the charge, and retract their confessions; but have set up no good defence, nor called any witnesses. The prisoner No. 5 denies likewise, and has called two witnesses to character. They are both his relations, but do not say anything in his favor. The *futwa* of the law officer convicts the prisoners of having in their possession stolen property, knowing the same to have been so acquired, and declares them liable to *tazeer*, in concurrence with which they have been sentenced. The higher sentence passed upon the prisoner Mudhoo (No. 2,) is in consequence of a former conviction of burglary in the foudaree court.”

Sentence passed by the lower court,—Nos. 1, 3, 4 and 5, each, two (2) years' imprisonment, with labor and irons, and No. 2, five (5) years' imprisonment, with labor and irons.

1852.

October 23.

Case of
SHEIKH
NEELMONEE
and others.

In a case of burglary, the prisoners found guilty by the sessions judge of the minor charge of having in possession stolen property, the court rejected the appeal, and observed that no reason was assigned for acquittal of the charge of burglary, which the prisoners confessed they were guilty of in the foudaree court.

* Acquitted by the court on a previous appeal. See Reports for September, page 366.

1852.

October 23.

Case of
SHEIKH
NEELMONEE
and others.

Remarks by the Nizamut Adawlut.—(Present: Mr. R. H. Mytton.)—"The prisoners have appealed, urging that they have been falsely implicated by another prisoner, and maltreated by the police. But they can point to nothing on the record to support their assertions. Their appeal is therefore rejected.

"It is not apparent why the prisoners have not been found guilty on the first and graver charge, of which their statements to the magistrate contain a full and direct admission."

PRESENT:

R. H. MYTTON, Esq., *Officiating Judge.*

GOVERNMENT

BHUGGEERUT SHAH.

1852.

October 24.

Case of
BHUGGEERUT
SHAH.

An appeal from a prisoner convicted, on his own confessions, of wounding, preferred on the ground of there being no proof against him, rejected.

CRIME CHARGED.—1st count, wounding Kishoree Bustomee, with intent to murder; 2nd count, maliciously wounding the said Kishoree Bustomee, with intent to inflict serious injury.

CRIME ESTABLISHED.—Wounding Kishoree Bustomee.

Committing Officer, Mr. J. S. Spankie, assistant, with magisterial powers, Furreedpore, Dacca.

Tried before Mr. C. T. Davidson, sessions judge of Dacca, on the 19th July 1852.

Remarks by the sessions judge.—"The prisoner is charged with wounding with intent to murder, and on a minor count with wounding with intent to inflict serious injury. It appears from the confessions of the prisoner, both in the Mofussil and before the magistrate, that he had been the paramour of the wounded woman, Kishoree Bustomee, for the last eighteen months, and that she had recently transferred her favor to one Hurry Sircar; that on the night before the occurrence he went to Kishoree's house, in the hope of being allowed, as heretofore, to share her couch, but he was denied by Gour Monee, her adopted mother, who informed him that Kishoree was with Hurry Sircar. This, and having seen Hurry Sircar give her a rupee and take his departure the following morning, was more than he could endure; and in the evening he persuaded Kishoree to accompany him to a neighbouring tank on the pretence of his having some silver ornaments there, which he wished to give her; that on arriving at the tank, he inflicted sundry wounds on her neck and breast with a knife, which he had provided himself with at Gour Monee's house; that he only intended to inflict such injury on her as should cause her to remember her faithless conduct for six months. The only eye-witness in the case is the wounded

woman. Her evidence, and that of the witnesses who went to her assistance immediately after the assault and brought her home, and the confessions of the prisoner, which have been duly attested before this court, fully prove the assault and wounding. The evidence of the sub-assistant surgeon goes to show that the wounds were not of a dangerous character. The prisoner beyond a denial of the charge and retraction of his confessions, has offered no good defence. The *futwa* of the law officer convicts the prisoner of having wounded Kishoree Bustomee, with intention to do her bodily injury, and declares him liable to *tazeer*; in concurrence with which finding he has been sentenced to two (2) years' imprisonment, with labor, if not redeemed by a fine of rupees fifty (50) within one month."

Remarks by the Nizamut Adawlut.—(Present: Mr. R. II. Mytton.)—"The prisoner appeals, denying that he ever confessed the crime, and pleading that there is no other proof of his guilt. "The appeal is totally without foundation, and is rejected."

PRESENT:

W. B. JACKSON, Esq., Judge.

SOLOMON CHRISTIAN

BEESIESHUR.

CRIME CHARGED.—Severely wounding the prosecutor with a sword.

CRIME ESTABLISHED.—Severe wounding of the prosecutor. Committing Officer, Mr. F. A. Glover, officiating joint magistrate of Chumparun, Sarun.

Tried before Mr. C. Garstin, sessions judge of Sarun, on the 30th July 1852.

Remarks by the sessions judge.—"The following is a short statement of the facts of this case. The prosecutor had picked up some mangoes in a garden which had just been blown down, when the prisoner abused him for taking them, upon which the prosecutor threw them back, and also returned the abuse; when the prisoner drew a sword he had with him and cut him severely, first across the left and then over the right shoulder, and also inflicted a very slight wound on the neck. Two or three persons (Christians) who were near at hand then ran up, and one of them laid hold of the prisoner (whilst the others looked after the wounded man), but he shook him off and made his escape, leaving a cloth and *pugree* behind him; but as these have not

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been proved to belong to the prisoner, the whole case against him turns on the evidence of the prosecutor and of those who came up to help him. The prisoner denies his guilt, and says on his trial that, on the day in question, he was engaged at a distance getting bearers, &c., for the Maharaja, and that the case has been instituted by the Christians, because he would not let them shoot some birds on his jheel, and that the wounding was caused by a fight amongst the prosecutor and his own people. When first taken, however, he admitted that he had no enmity with the parties, and in fact he can in no way substantiate his defence; for though he calls four witnesses to prove the *alibi* he speaks of, they all speak to a quite different date (no doubt by mistake), to that on which the affair took place, and though he also calls four other persons, who say that on this evening they saw the prosecutor and three other Christians going along, squabbling and tipsy, none of them can at all account for the man's being wounded. I have no doubt of the prisoner's guilt, and as the moulvee also convicts him, I have, in concurrence with the *futwa*, convicted and sentenced him for the offence as noted above."

Sentence passed by the lower court.—Seven (7) years' imprisonment, with labor in irons.

Remarks by the Nizamut Adawlut.—(Present: Mr. W. B. Jackson.)—"The evidence distinctly proves, that the prisoner Beesheshur, without any sufficient provocation, wounded the prosecutor with a sword, making three cuts at him, each of which took effect. The prisoner attempts to prove an *alibi*, in which he fails. I see no reason to interfere with the sessions judge's sentence."

PRESENT:

SIR R. BARLOW, BART.,	} Judges.
W. B. JACKSON,	
AND	
J. R. COLVIN,	
A. J. M. MILLS,	} Esqrs., Officiating Judges.
AND	
R. H. MYTTON,	

GOVERNMENT

versus

GOPAL DOOLYE.

CRIME CHARGED.—Having belonged to a gang of dacoits.

Committing Officer, Mr. S. Wauchope, Commissioner for the Suppression of Dacoity.

Tried before Mr. E. Bentall, additional sessions judge of Hooghly, on the 21st September 1852.

Remarks by the additional sessions judge.—“The prisoner pleaded ‘guilty’ of the crime of which he was charged. An approver, called Haran Talee, who had committed dacoities with him, mentioned different dacoities which they had committed together, the record of one of which cases I called for, and which is herewith forwarded. The crime took place at Hasanhattee, and the prisoner was one of the leaders of the gang. The prisoner was asked whether he had any questions to put to the witness, and he said that he had spoken the truth. He had previously confessed before the commissioner, and when he was called on for his defence he said that he had committed twenty or twenty-five dacoities in the Burdwan and Hooghly districts, which he had described at full length before the Commissioner for the Suppression of Dacoity. His detailed confession, which, however, was not proved on the trial, is also forwarded. I find the prisoner guilty of the crime with which he is charged, and propose that he be sentenced to transportation for life.”

Remarks by the Nizamut Adawlut.—(Present: Sir R. Barlow, Bart., and Messrs. W. B. Jackson, J. R. Colvin, A. J. M. Mills and R. H. Mytton.)—SIR R. BARLOW, BART.—“Prisoner on being charged admits he belonged to a dacoity gang.

“*Haran Talee, eye-witness.*—I have known the prisoner ten or twenty years. I have committed dacoity with him. About ten years ago, at Bideepore, and eight or nine years ago, at Ichapore, and at Hasanhattee some seven years ago, I committed dacoity. The prisoner was in those several dacoities with me. Nobin Bagdee, Sishtee Bagdee and the prisoner were

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Section I.
Act XXIV.
of 1843 applies to all classes of dacoits. Question of the mode of interpreting laws and of the force of the preamble considered.

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the sirdars at the Hasanhattee dacoity. The prisoner said the witness speaks the truth. I have no question to put to him.

"*Thakoor Dass Mojoomdar, witness to prisoner's confession before the Commissioner of Dacoity.*—The prisoner confessed to having belonged to a dacoity gang with Sishtee and the other sirdars.

"The prisoner had no question to put.

"*Gopeenath Mookerjee, witness to the same effect.*—Prisoner's confession before the commissioner for dacoity.

"Prisoner on being asked whether he belonged to a gang of dacoits, answers he did.

"*Question.*—To whose gang?

"*Answer.*—To that of Sishtee Bagdee and Nobin Bagdee.

"Prisoner states he has given in his principal confession the several dacoities he has committed in Hooghly and Burdwan. He has committed about twenty or twenty-five dacoities with Nobin and Sishtee who were the sirdars. He was under them.

"Counsel for the prosecution being asked what he understands or he wished the court to understand, as to the sense in which the prisoner understood the terms 'dol bhukto,' when he confessed to the charge, explains that he supposes the prisoner meant that he had frequently committed dacoities with certain persons under certain sirdars.

"The prisoner's case has, by a special order, been laid before the court at large and been argued by the Government advocate for the prosecution. Mr. Waller acting on the part of the prisoner at the court's suggestion. Mr. Waller, Mr. Trevor having waived his right to address the court first, proceeded in defence of the prisoners.

"A brief summary of what was urged by the respective parties in their pleadings is given.

"*Mr. Waller for the prisoner.*—Has argued that the Act XXIV. of 1843 is a limited law, and that the word *gang* must be taken to mean community, society, family, or colony, as is discoverable by reading the Act with Act XXX. of 1836 for the Suppression of *Thuggee*, the provisions of which are, by the preamble to Act XXIV., extended to it. Much importance, it is contended, is to be attached to the words 'within or without the East India Company's territories;' for a gang of men *having committed dacoity* in the independent territory of Tipperah, for instance, could not be tried by the Company's courts as belonging to a gang. *Thugs* are declared to be an associated body and the word has a defined meaning, as shown in Act III. of 1848, wherein 'the word *thug*, when used in any Act here- tofore passed, shall be taken to have meant and to mean a 'person who is, or has at any time been, *habitually associated* 'with any others for the purpose of committing by means

'intended by such persons or known by such persons to be likely to cause the death of any person,' &c., &c.

"Again, by Section I. Act XI. of 1848, gangs of thieves and robbers are distinguished as '*wandering gangs associated for the purposes of theft or robbery not being gangs of thugs and dacoits*,' &c., and some of the provisions of the law for the conviction of the latter are extended to the former.

"Counsel then quoted a case at page 52, volume VI. Nizamut Adawlut, showing difference of opinion on the bench as to the meaning of Act XXIV. of 1843, and cited several extracts* from

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* "The Oude and Nepaul Governments had given their cordial support to these measures, and a good many dacoits were captured and convicted upon their own confessions, and the testimony of their accomplices, and their notorious character as robbers by profession; and like Mr. Hodgson, Mr. Currie was led to believe, that he had finally crushed the gangs over the eastern border of the Oude forest to which his operations were confined.

"The gangs had been obliged to change their positions along the border of the great forest and double up, or go off for a time, to join their friends in Rohileund, the Dooab, Rajpootana and Gwalior. These colonies always calculated upon such occasional pressure upon particular points, and it was an essential part of their system to provide for it. The colonies, however distant from each other, intermarry and keep up a constant intercourse of visits and civilities. As among other Hindoo tribes, so among Budhuks, one gote or family is prevented from giving a daughter in marriage to a son of the same gote or family in the same or any other colony, but every colony has many gotes, so that they can accommodate each other. The Solunkee of one colony unites his daughter to the Powar or Dhundle of another colony and vice versa. When one colony is hard pressed or disturbed, and loses too many members to be able to act any longer independently, it goes off and unites itself for a season or two to some other distant colony, with which they have intermarried and kept up an interchange of civilities, till the pressure ceases, and their numbers are sufficiently increased, by the return of the old members or the acquisition of new; or it retires and hides itself for a time; abstains from all distant and hazardous enterprises, and contents itself with small affairs in the neighbourhood, so that the boldest and most able men may remain at home, and defend the colony from attack.

"The paramount power in India has since brought all these native states to co-operate more or less cordially in a common and strong effort, to put down these dacoit associations, as it had done to put down those of the Phunsiurs or thugs, as will be seen by and bye. It would perhaps be difficult to point out in the history of mankind any other single measure which produced so much of good, or removed so much of evil among so great a family of nations or so many millions of our fellow-creatures, as that of the suppression of these bands of murderers by hereditary profession, which has been unostentatiously effected by the Government of India, chiefly through the gratuitous services of its political functionaries accredited among the native states."

Extract from report by Mr. Munsel, the Magistrate of Agra.

"A much more perfect organization exists among the Bagooreeahs than among the robbers of the Rajpoot classes. The extension of Act No. XXX. of 1836, (by which the '*having belonged to a gang of thugs*' was

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the work of Colonel Sleeman to establish that the thugs are held by that officer to be robbers by hereditary profession, to be

declared an offence) to the tribe of *Budhuks* with its minor branches like the *Hurboorahs* would make a great advance towards the power of eradicating the crime from this side of India.

"Immediately after they were brought in, and before their associates could see them, or hold any communion with each other, the prisoner was placed among many other persons, and the approvers were brought in one after the other, and made to point him out, and describe his parentage, name and caste and the crimes in which he had been associated with them, or in which they believed him to have been engaged. Their depositions were compared with what they had stated in their narratives of the prisoner before his arrest.

"I should here mention that in the case of *dacoits by profession* as in that of *thugs*, a separate *misal*, or file of proceedings, is kept for every individual, and it goes on increasing from the time when he is first denounced as a member of the *gang* till he is finally committed to the sessions for trial, when it is sent up for the inspection of the court with the other documents."

Extract from report of Captain Paton, 1st Assistant Resident at Lucknow.

"As in the case of thugs, it is clear that they are a most formidable combination against life and property, numerous, bold, enterprising and increasing in numbers, speaking a language peculiar to themselves, invented for the purpose of concealment, *isolated from the general inhabitants of the country*, having laws answering in their operation to a pension establishment, by which all who belong, or have belonged to their colonies, *men, women and children*, whether with the colony or in jail, receive a share of the booty obtained by plunder, thus binding to their colonies, by the assurances of future support, even in old age, any who might otherwise have left their associations. It is equally evident that the suppression of these colonies can only, as in the case of *thuggee*, be effected by a well-sustained and simultaneous effort in every part of India where branches of the colony exist.

"In the case of *dacoits by profession*, as in that of the thugs, the necessity of collecting at one point, judicial proof, sufficient to ensure their conviction for a specific dacoity, was found to involve so much of trouble and loss to the persons who had suffered most from their crimes, that the necessity of making Act XXX. of 1836, which had been passed by the Legislative Council of India for thugs, applicable also to professional dacoits, became manifest in the early part of our proceedings to those best acquainted with the difficulties we had to contend with. This Act rendered any person, who should be convicted of 'having belonged to a gang of thugs, liable to the penalty of imprisonment for life; and any person accused of the offence made punishable by the Act, liable to be tried by any court, which would have been competent to try him, if his offence had been committed within the district where that court sits;' and dispensed with the *fatwa* of the Mahomedan law officer. To convict a person of having belonged to a gang of thugs, it was necessary to prove, not only that he belonged to a colony or family of thugs, but that he had been actually out on a *thug expedition*, with a gang of thugs, by whom murders had been perpetrated, and taken a part in their proceedings.

"In both cases the gang proceeded many hundred miles from their homes to commit their crimes, and to convict them of the specific offence, it was necessary to bring the persons who had suffered from these dis-

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habitually associated together, and that a mere assemblage to commit a single crime is not contemplated in the Act XXX. of 1836, the Thuggee Act; and pages 172 and 173 are particularly referred to, as showing that the extension of the provisions of the thuggee law to dacoits under preamble of Act XXXIV. could only be made applicable to dacoits by hereditary profession and association. Finally, he urged that the existing laws, Regulation LIII. of 1803, as amended by Section II. Regulation VIII. of 1808, already provided for cases of dacoity; that no new law was therefore necessary in regard to the commission of dacoity generally; and that Act XXIV. was restricted in its application to persons belonging to the habitual professional associations of thugs and dacoits mentioned in Act XXX. of 1836 and Act XXIV., even though a party had not actually taken part in the perpetration of the crime of dacoity.

"The Government Advocate, on the other hand, urged,—That Act XXIV. of 1843 was a general law, applicable to persons acting in two or three dacoities together. To ascertain the meaning of the law it is necessary to look into the law itself, not to search for its meaning beyond its limits, unless the terms of the law be unintelligible. He cited as authority for the mode in which statutes should be construed, the dictum of Tindal, chief justice, delivering the opinion of the judges, at page 439 of Broom's Legal Maxims:—"If the words of the statute are in themselves precise and unambiguous, then no more can be necessary than to expound the words in their natural and ordinary sense. The words themselves alone do, in such case, best declare the intention of the lawgiver." He further argued that though

tant points, to appear against them in the courts to which they were to be finally committed for trial. To avoid the great loss and inconvenience, which the necessity of this attendance involved, it was found that the sufferers did all in their power to conceal their sufferings, and often denied that they had ever been attacked, when the dearest members of their families had been killed or wounded, and all they had in the world had been carried off. In consequence, Act XXIV. of 1843 was passed by the Legislative Council, declaring Act XXX. of 1836 applicable to dacoits by profession as well as to thugs; so were Act XVIII. of 1837, which declared "any person charged with murder by thuggee, or with the offence of having belonged to a gang of thugs, liable to be committed by any magistrate or joint magistrate within the territories of the Honorable East India Company for trial, before any criminal court, competent to try such offences" and Act XVIII. of 1839, which declared "any person accused of the offence of murder by thuggee, or of the offence of unlawfully and knowingly receiving or buying property stolen or plundered by thuggee, liable to be tried by any court which would have been competent to try him, if his offence had been committed within the district where that court sits." The passing of this Act tended to relieve the sufferers from all apprehension, and to prevent any attempt on their part to conceal what they had suffered from the depredations of these offenders by hereditary profession."

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the preamble of the Act may be ambiguous, the sections which follow it are clear.

"The title, preamble, and enacting part of it are general and the rule of interpretation laid down by chief justice Tindal points out how a statute should be construed, but if the preamble be not quite clear the body of the Act is sufficiently so. He also referred to section VI. of Regulation XLI. of 1793, which requires that every law should have a title; and observed that the court's Circular Order, No. 171, in volume III. made the provision of the law in Section III. of the Act general; that the provisions of Section I. could not therefore be limited in its operation, and applied to the word 'gang,' its ordinary acceptation of any body of men banded together for any purpose.

"Mr. Waller, in reply, could not admit of this attempt to simplify the law. He laid great stress on the terms 'professional dacoits,' who belong to certain tribes systematically 'employed, &c.,' used in the preamble. The intent of the whole must be looked to. The words, '*belonging to,*' declare that there must be an association carrying on their lawless pursuits. There never was till the present occasion any argument on this point, and the wording of the law rendered it unnecessary under its provisions to prove a special act of dacoity; it is enough to establish 'a belonging to a gang.'

"This argument calls for a few observations.

"The prisoner's counsel attaches the greatest weight to the terms, 'belonging to a gang,' 'professional,' and 'systematic;' and no doubt the whole question now before us hinges on the true import of these words of the preamble if that be held to be a part of the law. The prisoner's counsel would read them by the light of the Acts relating to thuggee; hence 'belonging to' he understands to mean, not a casual, but an habitual association, and 'gang' to be synonymous with community, society, family, or colony, as explained in the acts and correspondence referred to in the course of his argument.

"A single act of dacoity committed without a premeditated plan by other persons than those connected with such communities, &c., it is urged, comes within the scope of the old laws, not within that of the Act XXIV.

"Relying on certain authorities, whom I shall presently name, as having correctly laid down the principles upon which statutes should be construed, I am unable to arrive at the conclusion drawn by the prisoner's counsel. I need no definition of the words in the preamble of the law above quoted. I would construe the sections of the law in their natural and ordinary acceptation. Whether they embrace the instance of a body of men, joining together on a sudden, for the purpose of committing a dacoity, might be a matter of doubt, if such an assemblage

had ever been heard of. But it may well be asked, did ever a number of men, without some previous consultation, without fixing a time, without first ascertaining where the property to be carried off was deposited, and without preparations in detail, meet for the purpose of committing a dacoity, each individual of the number being then for the first time a party to the actual perpetration of the crime? In the annals of thuggee and dacoity I never heard of such a case, and those best informed on these subjects well know that without the experience, the influence, the tact, and guidance of their sirdars, and more practiced hands, no gangs ever undertake an expedition. Such a case, then, is not under consideration in the remarks which I am about to make. I am to say what is the meaning which I attach to the words 'belonging to a gang,' habitually and professionally, in reference to the case now before us. A man committed for his first offence can hardly be said to be an habitual and professional dacoit, but if what I have just stated as to the formation of gangs and their rules of procedure be correct, must not the offence of the individual, who for the first time goes out to commit a dacoity partake of the nature of the crime* of the whole gang, amongst whom there are always leaders and old offenders. It is to be remarked that the epithets 'professional' and 'systematic' in the law are applied to the *gangs*, not to individuals otherwise than as being component members of those gangs. As to the import of the term 'belonging,' taken in its usual acceptation, which is the principle upon which the wording of laws ought to be construed, it is sufficient to remark that an officer belongs to a regiment from the day at least that he joins it; an advocate belongs to the bar to which he is admitted from the date of his admission; and so on. Upon the same principle, I hold that a dacoit belongs to a gang from the first moment he joins them. The association may be temporary; still it is an association; complete for the purpose, having one object in view, unlimited by duration of time; and where there is no specification in the law of the number of offences in which a party must be joined with others, such association with a gang by an individual, even for the first time, must, under the ordinary sense of the words 'belonging to any gang,' be held to be within the intent of the law. Prisoner's counsel has laid great stress on the term 'within or without the territories of the East India Company', and has put a case hypothetically. That before us refers to persons and places confessedly within the territories of the Company. It is scarcely necessary therefore to refer to it. It will be time enough to determine how the case he proposes should be dealt with, when

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* The maxim is *accessorius (a fortiori particeps criminis) sequitur naturam sui principalis*.

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such a one is laid before the court, involving the doubt he has raised. All argument founded on such an hypothesis is of no force. We must try the prisoner and give judgment on the record as it stands. At the same time I may say that, in my opinion, it could not be considered a forced interpretation to hold that the words 'within or without the East India Company's territories,' do cover the case hypothetically put. If regard be had to the following extracts,* it will be satisfactory to learn how the Government of India in 1829, proposed to deal with such offenders, and for this purpose the following observations, communicated in Mr. Secretary Swinton's letter to Colonel Stuart, then resident at Indore, and empowered to try thuggee commitments, is quoted. They will be found at

* *Extract from Colonel Sleeman's work, from page 47 to page 49.*

"The Government observed upon the trial of the Mahidpore gang.

"These murders have been perpetrated in territories belonging to various native chiefs, and the perpetrators being inhabitants of various districts, belonging to different authorities, there is no chief in particular to whom we could deliver them for punishment as their sovereign, or as the prince of the territory in which the crime had been committed.

"The hands of these inhuman monsters, being against every one, and there being no country within the range of their annual excursions from Bundelcund to Guzerat, in which they have not committed murder, it appears to His Lordship in Council that they may be considered like pirates, to be placed without the pale of social law, and be subjected to condign punishment by whatever authority they may be seized and convicted.*

"It is a principle of the law of nations, recognised, I believe, by every civilized people, that assassins by profession, shall find in no country a sanctuary, but shall everywhere be delivered up to the sovereign who reclaims them, and in whose dominion they have perpetrated their crimes, and as the crimes of these assassins are never confined to the country in which they reside, and as every country in India must now be considered as under the protection of the Supreme Government in some relation or other, that Government very properly undertook the duty which seemed to be imposed upon it by the laws of humanity and of nations, and determined to reclaim them from every state in which they might seek shelter.†

* See Mr. Secretary Swinton's letter to Colonel Stuart, of the 23rd October 1829. To few men is the success which has attended these operations more attributable than to Mr. George Swinton, who was then chief secretary to Government and is now in Europe.

† "Although the justice of each nation ought in general to be confined to the punishment of crimes committed in its own territories, we ought to except from this rule those villains, who by the nature and habitual frequency of their crimes, violate all public security and declare themselves the enemies of the human race. Poisoners, assassins, and incendiaries by profession may be exterminated wherever they are seized; for they attack and injure all nations, by trampling under foot the foundations of their common safety. Thus pirates are sent to the gibbet by the first into whose hands they fall. If the sovereign of the country where crimes of that nature have been committed, reclaims the perpetrators of them in order to bring them to punishment, they ought to be surrendered to him, as being the person who is principally interested in punishing them in an exemplary manner. And as it is proper to have criminals regularly convicted by a trial in due form of law, this is a second reason for delivering up malefactors of that class to the estates where their crimes have been committed."—Vattel's Law of Nature and Nations, Book I., Chapter 19."

pages 47, 48 and 49 of Colonel Sleeman's work on Thuggee with his annotations and a note annexed to them.

"But, as already observed, for the purposes of *this* case, no such question arises. It must first be seen whether a dacoity or dacoities occurred, and then whether the prisoner belonged to a gang of dacoits connected with those dacoities.

"The prisoner's detailed confession before the Commissioner for Suppression of Dacoity, has not been placed on the record by the sessions judge who referred the trial. This is a great omission on his part; but I do not think that the absence of that document is a bar to the case proceeding. The dacoities are sufficiently proved by the prisoner's answer confessing to the commission of twenty or twenty-five dacoities in Burdwan and Hooghly under Nobin and Sishteedhur, who were the sirdars, supported as it is by the evidence of Haran Talee, an approver, and by that of the witnesses who subscribed to the confession and have sworn to it. It is to be shown under what circumstances and by what rule or interpretation of law the prisoner is proved to have been so connected with the dacoities referred to as to be obnoxious to the charge of 'belonging to a gang of dacoits,' within the meaning of the law under which he was committed. On his apprehension he freely confessed that he did belong to a gang of dacoits. He named the leaders of the gangs under whom he had served as well as the districts which had been the scene of his depredations to the extent of some twenty or twenty-five. An approver, a witness who had acted in concert with him upon the several occasions, swore to the prisoner as one of his party and confirmed his statements; and two witnesses have verified the prisoner's confession before the Commissioner for Suppression of Dacoity. These are the circumstances. The *corpus delicti* is clearly established, and the prisoner's confession is, under the above circumstances, ample legal evidence, and alone sufficient for his conviction. Then as to the interpretation of the law and the rules laid down for construing statutes to be found in works on that subject.

"The Government advocate has referred to Broom's *Legal Maxims*,* pp. 438 and 439, but the opinion of other judges and the cases in which they were passed are to be found in a

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* *Extract from Broom's Legal Maxims, pp. 438 and 439.*

"The only rule, it has been said, for the Construction of Acts of Parliament is, that they should be construed according to the intent of the Parliament which passed the Act. If the words of the statute are in themselves precise and unambiguous, then no more can be necessary than to expound the words in their natural and ordinary sense. The words themselves alone do, in such case, best declare the intention of the lawgiver. But if any doubt arises from the terms employed by the

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work of authority, Dwarris* on Statutes, pp. 665 to 668. Construing the Act under the rules laid down by the authorities in

Legislature, it has always been held a safe means of collecting the intention, to call in aid the ground and cause of making the statute, and to have recourse to the preamble, which, according to Chief Justice Dyer, is 'a key to open the minds of the makers of the Act and the mischiefs which they intended to redress.' **

* *Extract from Dwarris on the Statutes, from pp. 655 to 658.*

Preamble.—"The preamble to a statute usually contains the motives and inducements to the making of it; but it also has been held to be no part of the statute.

"In doubtful cases, recourse may be had to the preamble, to discover the inducements the legislature had to the making of the statute; but where the terms of the enacting clause are clear and positive, the preamble cannot be resorted to. Lord Coke considered the rehearsal or preamble a key to open the understanding of the statute, and it is properly considered a good mean for collecting the intent and showing the mischiefs which the makers of the Act intended to remedy. The Civilians say, *cessante legis præmio cessat et ipsa lex*, but English lawyers are aware how seldom, at least in the older statutes, the key will unlock the casket, how rarely the preamble is found to state the real occasion of the law, and the full views of the proposer of it. 'It is nothing unusual in Acts of Parliament,' says Lawrence, J., in the case of the King and Marks, 'for the enacting part to go beyond the preamble, the remedy often extends beyond the particular act or mischief which first suggested the necessity of the law.' 'It certainly does appear from the preamble of the Act,' said Lord Ellenborough in that case, 'as if it were mainly directed against combinations for purposes of mutiny and sedition; but there are words sufficient in the enacting part to satisfy the preamble, and after dealing with offences of that description, the Act goes on in much more extensive terms, and embraces other more general objects; and as there is no word of reference in the latter part (as such,) I see no reason for restraining the common import of the words used,' &c. 'Sometimes,' it is well expressed by another reporter, 'the legislature, having a particular mischief in view, which was the primary object of the statute, merely state that in the preamble, and then go on in the body of the Act to provide a remedy for general mischiefs of the same nature, but of different species, neither expressed in the preamble, nor perhaps, then in immediate contemplation'. Indeed, Lord Coke's manner of expressing himself is very observable.* Instead of saying that the preamble should control the enacting clauses, or of limiting precisely how far it should have that effect, which would have been attempting to mark a line, where, it is to be feared, one cannot be drawn, he cautiously says, that it is a good mean to find out the intention. Indeed, what sort of influence the preamble ought to have in expounding statutes, will be best explained by examples at a future time, when the rules of construction applicable to distinct parts of statutes are taken into consideration.

"It will perhaps be found that the rule is stated at once broadly, and with the greatest accuracy by two of the judges, (Mr. Justice Buller and Mr. Justice Grose,) in the case of *Crespigny versus Wittenoom*, that the preamble may be compared with the different clauses of the Act,

* Per Tindal, C. J. delivering the opinion of the judges in the *Sussex Peerage*, 11 Cl. and Fin. 143.

the several cases already adverted to, I conclude that Act XXIV. of 1843 is a general law for the suppression of dacoity. The spirit of the remarks cited from Colonel Sleeman's book is embodied in the enacting Section I., every word of which would appear to have been designed to meet the exigency now before the court. The enactment is undoubtedly a most stringent one, but it was passed after due deliberation to provide for an extraordinary state of things, to put a stop to fearful enormities. A similar law was passed against the thugs, professional murderers, and this enactment is directed against dacoits of every denomination, class and caste, robbers who do not hesitate to add the crime of murder to that of dacoity whenever occasion calls for it.

"Taking the very plain and most comprehensive meaning of the words in the body of the Act, I cannot restrict its application by reference to the thuggee laws, to any particular class, association, or gang of dacoits. It seems to me that the Legislature, in making use of the several clearly-defined provisions of Section I., prepared themselves for a blow against every possible description of dacoit and person connected with dacoity. To give a restrictive application to the law by construction of its preamble is, it appears to me, opposed to the practice and rules prescribed by the high authorities already quoted. I had already, last year, before this discussion as to the meaning and

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to collect the intention of the legislature, and, where the intention is apparent not to extend the Act; the preamble may be used in restraint of the generality of the enacting clause, where it would be inconvenient if not restrained, or it may be resorted to in explanation of the enacting clause if it be doubtful.

Purview or body of the Act.—"The true meaning of the statute is generally and properly to be sought from the purview or body of the Act. The preamble of a statute is no more than a recital of some inconveniences, which by no means excludes any other, for which a remedy is given by the enacting part of the statute. Great doubts have existed how far the preamble should control the enacting part of the statute, but abundant cases have established that where the words in the enacting part are strong enough to take in the mischief intended to be prevented, they shall be extended for that purpose though the preamble does not warrant it; in other words, the enacting part of the statute may extend the Act beyond the preamble.

"It will be found also to be an established rule in the exposition of statutes that the intention of the lawgiver is to be deduced from a view of the whole and of every part of the statute, taken and compared together. In construing Acts of Parliament, the courts are not to look only at the language of the preamble, or of any particular clause. If they find in the preamble, or in any particular clause an expression not so large and extensive in its import as those used in other parts of the Act, &c., it is their duty to give effect to the larger expressions. Indeed, a statute ought, upon the whole, to be construed that if it can be prevented, no clause, sentence, or word, should be superfluous, void or insignificant."

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intent of Act XXIV. of 1843 came on, given judgment in two or three cases of dacoity in which the prisoners were charged under it. They are to be found at pp. 216 to 218 of the Nizamut Adawlut Reports for February 1852.

"After hearing the arguments on both sides, and carefully collating and considering the several laws bearing on the subject, I can only construe this law in one way. The preamble speaks of professional dacoits who belong to *certain* tribes against whom more stringent measures are to be adopted. But these tribes are not mentioned in any section of the law. Against whom then is it to be put in force? In order to ascertain this, it is necessary to find, by reference to the body of the Act, to whom it does apply. Section I. enacts that, '*whosoever* shall be proved to have *belonged*, &c., to *any gang* of dacoits, &c., shall be punished with transportation for life, or with imprisonment for any less term, with hard labor.'

"The provisions of the several laws for the prevention of thuggee are extended to that now under consideration. Thug gangs are composed of Mussulmans and Hindoos of every caste, from the highest Brahmin to the lowest Dosadh; and Act XXX. of 1836 declares that '*whosoever* shall be proved to have '*belonged to any gang of thugs*,' &c. Under this law numbers of all classes, of the fraternity, which is confined to no tribes, have been punished throughout our territories.

"The unnamed tribes alluded to in the preamble of Act XXIV. of 1843 are, I believe, the Budducks and Keechuks, and perhaps the likelihood of the discovery of other tribes (others, such as Khunjurs in the Lower Provinces, have since been discovered,) was the reason for omitting to specify the *certain* tribes. It must be inferred that it was the object of the Government to pass a general law to include all classes and descriptions of dacoits. Hence the enacting Section I., which declares, in the plainest language and most comprehensive terms, that '*whosoever* shall be proved to have *belonged to any gang* of dacoits', &c. But for this full and clear declaration, the Act would have been altogether inoperative in the suppression of dacoity; for the terms of the preamble did not indicate the *certain* tribes against whom its provisions were directed.

"The extracts already quoted from 'Dwarris on the Statutes' and other authorities, show the practice and principles of the courts in England, when required to construe doubtful statutes. Their applicability to the case before us must, I think, be admitted.

"There is certainly ambiguity arising out of want of specification in the preamble of this Act; and as certainly the clearest enunciation in the enacting parts of the law of the intention of the Legislature to put in force the penalties therein contained,

against all gangs, and every one who may have belonged to a gang. Nothing restrictive, nothing obscure, is discoverable in the language of Section I. The provisions of it cover the case of every dacoit committed, whether for a single or many dacoities, or for the offence of having belonged to a gang of dacoits, such an one renders himself, in my judgment, liable to transportation for life, but of course circumstances of mitigation may appear. It may be the first offence of a youth, unknowingly drawn into the crime by more practised hands. The prisoner may have been entrapped by the administration of drugs or liquor given to him by his principals for that purpose. In such cases conviction of *belonging to a gang*, would, as well as conviction of the particular offence, be good, but the minor sentence for a 'term of years' would meet the demands of justice. In the case of the leaders or old offenders, the full penalty of the law would be exacted. In both cases the parties charged, belong to a gang, *i. e.*, a body of men, however composed, joined together for the purposes of dacoity coming within the purview of Act XXIV. of 1843."

MR. W. B. JACKSON.—"I have already, in the case of Kalachand Ghose, delivered my opinion generally on the intent, purport, and effect of Section I. Act XXIV. of 1843. It is not necessary that I should now go over that ground again, except so far as to state that the opinion expressed by Sir R. Barlow, Bart., upon the subject of the principle on which laws should be interpreted, and the manner in which he applies that principle to the law in question and to the case before us, has my entire concurrence. I have a few further observations to record.

"I fully admit the principle that where a law is plain and intelligible in its enactments, we are not to go to the preamble or anywhere else to search for lights explanatory of its meaning. *Sententia absoluta expositore non indiget* is an established maxim,—see Lord Coke's institutes. If the law is plain, it needs no exposition; and if this rule be correct, the inference *à fortiori* is that if the terms of the enacting part of a law are full and general, the courts are not at liberty to limit these terms and restrict their operation within certain bounds, the extent of which is to be sought from the terms of the preamble.

"Here the law says, 'whosoever shall belong to a gang of 'dacoits' shall be liable to imprisonment for life. There is no restriction to persons habitually belonging to particular tribes or families. The preamble indeed, when mentioning the inducement to pass the law, refers to certain tribes and to professional robbers, but the enactment is full and general for all persons whatever. It is impossible to suppose the Legislature to have meant the law to be applied otherwise than generally,

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without imputing to the learned and able persons entrusted with the duty of drafting the laws a degree of carelessness and ignorance of the weight and effect of expressions scarcely conceivable, and which at all events we have no right to assume. On the contrary, we must assume that the Legislature meant what it says. Even if the law has done more or less than was within the original scope of the framer of it, we are still bound by it as it stands, provided the terms are such as leave the meaning open to no doubt. We are to declare what the law is, not what it ought to be, or what it was intended to be.

“The terms of the law in this instance being quite plain, as affecting all persons whatever, without reservation or distinction, we have only to go on to explain the nature of the specific offence as laid down in it, the ‘belonging to a gang of dacoits.’ This includes two points. What is a gang of dacoits, and what constitutes belonging to it? It has been argued to-day that a gang of dacoits does not mean simply a party of men associated for the purpose of committing dacoity, but a party associated habitually as a distinct fraternity with *ex parte* habits and distinctive rules and regular organization. Now, undoubtedly, the systematic and habitual practice of dacoity and the careful and regular organization of fraternities for the purpose of committing such crimes, are circumstances of great importance, and likely to have much weight with the legislature, as reasons for passing a new law and inflicting new penalties on such crimes. We therefore find these facts mentioned in the preamble of the law. They formed the inducement to pass it; but the crime of dacoity is the same, whether it be committed by regularly-organized bands, by associated hereditary fraternities, or by gangs who meet together for the purpose of committing dacoity without such elaborate previous arrangements. The object of the Legislature is to prevent dacoities, and the law with this view declares that not only shall dacoity be punishable as heretofore, but the mere fact that a person belongs to a gang of dacoits shall be held to be a crime, and punished accordingly; that is, it shall be held to be a crime to consent with others to become one of their association for the purpose of committing dacoity. Now this feature exists to the same extent in the crime of the individual so associated by his own consent, whether he was admitted yesterday into the gang or ten years ago; in each case it is a proof of intent to commit dacoity. The nature of the offence therefore is not affected by the more regular organization, the habitual practice, the hereditary education and systematic arrangement; and the argument that these circumstances are necessary to bring the crime within the scope of the law appears to me of no force. The object of the law is the prevention of the crime of dacoity, not merely the punishment of it when committed.

Habit, system, and organization are matters connected necessarily with the past, but the law looks to the future. It says nothing of habit, system, &c., &c., in its enacting part, because those matters were foreign to its object. Moreover, they are most difficult to prove in a court of justice, as well as irrelevant to the offence under consideration. I think therefore that a gang of dacoits is simply any party of persons associated for the purpose of committing dacoity; and that this was the meaning of the Legislature in Section II. Act XXIV. of 1843.

"It is immaterial whether the gang has or has not committed a dacoity, though such a fact would be a proof of the existence of a gang of dacoits; but a gang of dacoits may exist, indeed must exist, before it has ever committed a dacoity.

"As to what evidence is necessary to prove that a party of men constitute a gang of dacoits, or that an individual belonged to such a gang, it is impossible beforehand to lay down a rule. The evidence may be as various as the circumstances of life, but it must be such as to satisfy the judge on both points; otherwise no conviction can be had.

"In this case we have the prisoner's confession that he belonged to a particular gang of dacoits, which gang was called and distinguished by the name of the sirdars or leaders, Sishtee-dhur and Nobin Bagdee's gangs. This is confirmed by the evidence of a witness, Haran Talee, who was an accomplice in several dacoities, and swears that the prisoner was one of the gang when it perpetrated certain dacoities. This is sufficient to prove against him the charge of belonging to a gang of dacoits as laid in the indictment. I concur in the conviction and sentence.

Messrs. J. R. COLVIN AND A. J. M. MILLS.—"All the evidence against the prisoner consists in his confession, in a few words, that he had been included in a gang* or party of dacoits, under three other persons named. In what sense the word *dole*, or gang, was understood by him is in no way to be distinctly gathered from the record, that is, whether he referred to the *dole* as consisting usually of the same persons, or how often they, or some stated number of them, had acted together before they could be regarded as a *dole*, or gang, or whether he alluded to any bodies of persons, although acting together in each separate instance for that time only if some certain number of dacoities were contrived and committed under the direction of the same leaders. This is, in our judgment, on the face of it, a very vague and unsatisfactory ground for awarding against a prisoner a sentence of transportation for life. The offence is most loosely

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* "The words used are *dakaiter dole bhookto*, which are those of the Bengalee translation of Section I, Act XXIV. of 1843; but do not render the full sense of the English word belonging."

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averred; and it is to be *conjectured* only, from all that he has said, that the prisoner acknowledged it as regards the acting merely under the *general leadership* of *particular persons*, while it is by no means certain that this is the sense in which the charge was framed. It is to be remarked that the one witness, who has been examined in support of the case, says nothing as to *any gang*, but states that the prisoner committed three specified dacoities in his, the witness's, company; in *one* of which the prisoner, and two of the persons whom the prisoner mentions in his confession as the heads of his gang, were the principals. The evidence for conviction on the charge laid, rests, therefore, in truth, upon the three lines of general admission alone.

"Now, the prisoner says that he had made a detailed confession, in which he had disclosed all the particulars of twenty or twenty-five different dacoities, in which he had been engaged. These direct acts of crime are *not charged, nor is that confession placed upon the record*. These circumstances, of themselves, show that the court ought to proceed with great accuracy and caution before they allow a conviction, involving such penalties, on an offence alleged in such very general terms, while repeated acts of distinct and undoubted crime, stated to have been perpetrated by the prisoner, appear to be wholly excluded from the investigation.

"The Government Advocate, when asked to state the sense in which he understands the prisoner to have confessed to the charge, has replied that he apprehends the prisoner to have meant that 'he had *frequently committed dacoities with certain persons under certain sirdars*.' This is an explanation which certainly does not remove the indefiniteness of this charge, while it shows that the *actual commission of dacoity* is regarded for the prosecution, as in the present case, of the substantial purport of the confession.

"The record, as it stands, does not even endeavour to give certainty and precision to the one matter essential to sustain the general charge, namely, what is the nature of the 'gang of dacoits' or '*belonging to*' or being a member of '*any*,' which punishable under the highly penal provisions of Section I. Act XXIV. of 1843.

"This law is one of an anomalous kind. It declares not *acts of specific crime*, such as this prisoner speaks to, but simple association, punishable, and it is to be carefully considered what is the true character of this association, so that the heavy penalties which the law enacts can be applied to it with clearness and uniformity.

"What is a '*gang of dacoits*' to which a party can be regarded as '*belonging*' within the meaning of the Act? These words

are obviously not express and precise words, leaving no room for doubt as to their fair sense in ordinary construction. What constitutes a '*belonging*,' that is, being a member of, or having some fixed or habitual connexion with, or relation to, a gang; and what constitutes a gang to which it is possible that such an habitual relation can subsist; upon what intelligible test in the application of an extraordinarily penal law, the existence of a '*gang*,' and the fact of '*belonging to it*,' are to be judged; are, in our judgment, matters open to very great doubts. About the general and notorious rules for the interpretation of laws, in such a case there can be no difference of opinion. In construing these terms in themselves, as it seems to us so extremely vague and ambiguous, it becomes the duty of the courts to discover the design and intent of the legislature in employing them, upon reference to the whole context of the law in which they occur, including its preamble, and especially (for there is this great peculiarity and assistance in the present instance) to the sense which is distinctly given to the same identical terms in the series of acts, of which Act XXIV. of 1843 is only an avowed part, and in *which alone*, in the whole body of our laws, these peculiar words are found. These are Acts XXX. of 1836; XVIII. of 1837; XVIII. of 1839; III. of 1848 and XI. of 1848, regarding gangs of '*habitually associated*' thugs or '*any wandering gang of persons associated for the purpose of theft or robbery not being a gang of thugs or dacoits.*' The preamble of Act XXIV. of 1843 is of governing importance; for it states not only the consideration out of which the framing of the law arose, but it sets forth also, in express language, the mode in which the object was to be carried into effect, *viz.*, by '*extending the provisions of the Acts (enumerated) for the prevention of thuggee to persons concerned in the perpetration of dacoity.*' The true construction of the Acts in regard to the offence of '*belonging to a gang of thugs*' necessarily, upon such a declaration, indicates and fixes the sense of the same words in the Act for punishing the '*belonging to a gang of dacoits.*' As far, and to whatever classes of persons, the Acts regarding gangs of thugs will apply, so far, and to the like classes of persons this Act, as it regards gangs of dacoits, is applicable, but clearly, as we apprehend, in no way further or otherwise. On the contrary, it is the first duty of the courts, in enforcing so special and stringent a criminal Act, to take care that it is restricted closely within the principle of the laws, of which it is, in its terms, a repetition, respecting gangs of thugs; and this the more that the purpose of the Act, as extending the provisions of the previous thuggee Acts, is also in the preamble distinctly stated to be the conviction of persons, who, like the

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members of the associated gangs of thugs, '*belong to*' organized communities, *who follow dacoity by profession and system*. The proper aim and object of the Act seem to us, upon these statements, to be really placed within a very narrow ground of controversy. The Act, as we need scarcely again point out, is, in its frame and expressions, nothing else than a consolidated re-enactment, made applicable to dacoits, of the Acts in force at its date in respect to thugs. There is the difference only that the penalty may be graduated to imprisonment for any term short of life, a modification which was plainly called for, as the proceedings of gangs of dacoits may often be less heinously criminal than those of gangs of thugs, who always commit or attempt murder.

"Laws of this description, though special and extraordinary, are not without precedent. They proceed on the assumption that there are particular bodies or associations of such notorious certain, and deep-rooted guilty purposes and habitudes, that the being a member of them is, in itself, convincing proof of a criminal character and course of life. It is on this account alone that the *ex post facto* character of these special thuggee and dacoity laws is explicable. They are made to include a 'having belonged, *either before or after* the passing of the Acts,' and 'in all places within or without the Company's territories,' which could assuredly not have been intended to be taken in any vague sense. As against members of communities, who are, as Mr. Waller well observed for the prisoner, in the course of his argument, by systematic and constant profession and pursuit, enemies of the human race, they are intelligible and fit; but not so assuredly against persons who may once or twice have merely joined common dacoit parties. There have been laws in England of the same general tendency, though not, we believe, with the same retrospective effect, against persons who are members of illegal combinations and confederacies; but then they contain an exact definition of the circumstances,—such as the taking of illegal oaths, the keeping the names of their members secret, the having distinct branches, the bearing a specified name, or the being united in the profession of certain proscribed doctrines, &c., which prove the illegal association; and though the class of laws of the Indian Legislature which we are considering supplies no such definition, yet this is not because it could have been meant that, with all the serious consequences attaching to them, they should be applied in any loose or arbitrary way, but because, on the contrary, the meaning of their terms was understood to be already so thoroughly fixed and clear as that all explanation or definition would be superfluous. Thus for twelve years there was no definition of what was to be under-

stood by the term thug. When it* was found that there were families and small associated parties who practised murder by other means than *strangulation*, it was thought necessary to explain that the term should be taken to include all persons who employed any 'means intended by such person, or known by such person to be likely to cause the death of any person.' But it was at the same time stated as an essential prerequisite that the person affected by the Act (III. of 1848,) should be one 'habitually associated† with any other or others' for the purpose of employing these means. The words 'habitually associated' are the more remarkable, because they are deviations‡ designedly made, from the first definition of a thug, which was given in Section CCCX. of the original draft of the penal code. That definition was, 'whoever belongs, or has at any time belonged, to any *gang of persons, associated*' (for here too 'association' was made essential to the offence) '*for the purpose of gaining a livelihood by inveigling and murdering travellers in order to take*

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* The circumstance which led to the passing of Act III. of 1848 are known from our own records. The following are extracts from a letter, No. 395 of April 17th 1847, on the subject, from the Western to this court, which shows that members of 'associated' or 'organized bodies' were alone in view, these following thuggee as an habitual or professional calling, and the reply of this court, No. 567, of 1847, treats the matter as one exclusive of 'professional prisoners.'

Extract (para 5) from a letter from the Register of the Western Court to the Register of the Presidency Court of Nizamut Adawlut, No. 395, of 17th April 1847.

"The preceding extracts completely establish the analogy between the crime signified by the word 'thuggee' and that under notice, and leave it to the court only to consider whether the perpetrators of the latter can with propriety be considered to fall within the denomination of 'thug;' that they are robbers by profession there is no doubt, and so far they answer to the character; that murder is made by them auxiliary to plunder there is no doubt; and that this murder is committed, not by open violence, as in highway-robbery or dacoity, but in the same deceitful insidious way that characterized the operations of the Phanseegur thugs, is equally certain: their victims are similarly inveigled, under pretence of receiving protection on the road or some other advantage, they are similarly murdered in their unguarded moments, and their property plundered, the only difference consisting in the fact of poison being used as the instrument of murder instead of the 'roomal' ***. The chief distinctive characteristics of the robbers called 'thugs' are that they compose organized bodies, who commit the crime of murder for the purposes of plunder as a professional calling."

† Act III. of 1848 is declaratory as well as enacting. Its terms are—'It is hereby declared and enacted that the word thug shall be taken to have meant and to mean,' &c.

‡ See on this point paras. 345 and 346 of the Report of July 23rd 1846, by the Law Commissioners on the revision of the first draft of the Penal Code.

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'the property of such travellers, is designated as a thug.' The parallel between casual and associated thugs and casual and associated dacoits is complete, as it is one necessarily to be regarded according to the defined principle and purpose of the special Dacoity Act. Persons may meet together once or occasionally to do all that thugs do, but they are not gangs of thugs unless they live in *habitual association for that criminal purpose*. So also persons may meet together once or occasionally to commit dacoity but they are not gangs of dacoits within the sense of the corresponding Act for that crime, unless they live in a similar habitual association. It is to be here again pressed as, to our minds, absolutely conclusive on this question, that Act III. of 1848 was not passed for the purpose of introducing or notifying the condition (though even on this point the Act is in its nature, as has been noted, declaratory of what *had always been* the meaning) of 'habitual association' as necessary to the just conception of the crime of thuggee, but that association being, in fact, the previous well-understood character and essence of the class of offence for the purpose of declaring that it would be as penal when the trade of death was carried on by any other means as well as by the use of the *roomal*. We have knowledge of this fact upon our own records, and a certain historical fact of this kind is justly to be taken into consideration when we are inquiring into, and seeking to fix, the genuine sense of doubtful words in a peculiarly penal law. Again, when by Act XI. of 1848, the principle of punishing the same offence of 'belonging to a gang' was extended to all 'wandering gangs of 'thieves and robbers,' this was done by extending, in the same language as it regards the point now under discussion, 'some of 'the provisions of *the law*' (treating it as one) 'for the conviction of *thugs and dacoits*' to those other gangs who were described as 'any *wandering* gang of persons, *associated for the purposes of theft and robbery, not being a gang of thugs or 'dacoits,*' which is surely a manifest declaration of the sort of 'gang' that had been intended by the previous legislation regarding dacoits as well as thugs. How in the face of these distinct legislative declarations, that it was only the principle or provisions of the law regarding gangs of thugs which was extended to gangs of dacoits, that the law on this point as to thugs and dacoits was regarded as identical, and that the gangs contemplated by the law were gangs so associated as that they could move together from one part of the country to another (which is, it may be here observed, the obvious reason for making this offence of association committable by all magistrates, and triable by all judges in any part of the Company's territories.) How, we ask, can it be justly held that precisely the same words of 'belonging to any gang' will admit, when they occur in Act

XXIV. of 1843, of being construed in any less exact and definite manner than these same words in the laws regarding the other classes of analogous offenders?

"These laws, then, we conclude upon the sound construction of their own terms and purport, are directed exclusively against members of the 'habitually associated' gangs of 'thugs,' 'dacoits' or 'other wandering gangs of thieves and robbers, not 'being gangs of thugs or dacoits,' who notoriously live in *distinct societies or communities*, having a fixed course of criminal life as their profession and bond of union, and who are, as the preamble of Act XXIV. of 1843 expresses it, 'systematically employed in carrying on their lawless pursuits in different parts of the country.'

"Upon any other interpretation of the law, the consequence, ably pointed out by Mr. Waller, for the prisoner, would, as it appears to us, indubitably follow, namely, that the merely having once or twice joined or associated with, even before the passing of the Act, an occasional gang or party of dacoits 'without the territories of the East India Company,' would compel a conviction under the Act of any person whomsoever (for the words are 'shall be *punished*,' not 'shall be *punishable*,') even although persons not subjects of the British Government, according to the defined conditions of residence, are entirely exempt from the jurisdiction of the Company's court for the actual commission of dacoity beyond the Company's limits. It appears to us clear, that an interpretation of the Act from which this consequence must arise, cannot be the correct one. A provision of this kind is intelligible and warrantable (as we have said also of the retrospective provision in the Act) when it is understood as applicable to gangs associated and organised, so as to allow of their prosecuting their predatory purposes over all parts of India. But the courts cannot fairly presume it to have been the intention of the legislature that such a provision should be enforced against persons who have, at some time or other, joined merely casual gangs assembled to commit robbery within a foreign state. The extract from the orders of Government in 1829, referred to in Sir Robert Barlow's Minute, and cited in its appendix A, strongly supports our view, and points out the origin and aim of this provision, when it speaks of 'inhuman monsters, whose hand is against every one,' and '*the range of their annual excursions having extended from Bundelkhund to Guzerat*, it appears to 'His Lordship in Council, that they may be considered like pirates, to be placed without the pale of social law and be subjected to condign punishment by whatever authority they may be seized and convicted.' This is a principle which it will not be denied, is not at all applicable to the ordinary classes of village dacoits.

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"Upon the construction which we must consider the only sound one, the application of the Act becomes clear, just, and reasonable. It is right and fit to brand, by the severest rigours of the law, the becoming a member of the community, separated from the rest of the world by the one tie of following a systematic and constant course of crime. The existence of such a separate community, and the becoming a member of it, are facts which can be distinctly proved, and they render unnecessary all proof of the commission of particular crimes. If we depart from this one consistent and perfectly-intelligible construction, we shall either, as it seems to us (putting aside all the considerations previously stated) be straining the sense of the words '*belonging to a gang*' of dacoits, beyond what they can in any manner bear, as well as beyond any reasonable object of such a law, or we shall leave the courts without any distinguishable test of what is sufficient to form a gang of dacoits within the meaning of the Act to which a party charged can '*belong*.'

"In aid and illustration of the opinion which we deduce from what must of course be our guide in the construction of the law, the terms and tenor of the laws themselves regarding this offence of '*belonging to a gang*,' we may refer to the ample evidence of the true object and intent of the Act, which regards gangs of dacoits, and the construction of which the court has now to determine; that is supplied by the published report of Colonel Sleeman on his measures for suppressing the professional dacoit communities or gangs in all parts of India. Throughout this detailed and elaborate paper nothing is alluded to, but the separate *dacoit colonies* or *families*. The letter to the Government with which it opens, refers to '*thug associations*,' and '*dacoit associations*,' as precisely of the same character. In all parts of the report, the terms '*colony*,' '*family*,' '*clan*,' '*class*,' '*tribe*,' '*community*,' '*fraternity*,' '*association*,' '*gang*,' are employed as being of the same import. The distinctive character of the whole of them is habitual association in distinct communities, apart from the ordinary population of the country. These communities are connected by intermarriages, common rites, and superstitions, a generally common origin, and a peculiar language, &c. Thus at page 120, Colonel Sleeman says, '*every Budhuk dacoit can, at the instant, tell one of the 'gote' or tribe, to which any other member of his GANG or COLONY belongs, the family into which he has married, and the name and character of all his relatives and connexions by marriage.*' The first mention of applying the law regarding gangs of thugs to gangs of dacoits is found at page 94, where Mr. Mansel, then magistrate of Agra, wrote in 1838. '*The extension of Act No. XXX. of 1836, (by which the 'having belonged to a gang of thugs' was declared 'an offence) to the tribe of Budhuke, with its minor branches,*

'like the Harpoorahs, would make a great advance towards the 'power of eradicating the crime from this side of India.' And how Colonel Sleeman, the superintendent of the measures for the Suppression of Dacoity, and who subsequently procured the passing of the Act XXIV. of 1843, in aid of his operations, understood the Act to apply, is incontestably shown by the extract, which is cited at length at the foot,* from pages 172-3 of the Report, and which says in express words—'In consequence 'Act XXIV. of 1843, was passed by the Legislative Council, 'declaring Act XXX. of 1836 applicable to dacoits by profes- 'sion as well as to thugs.'

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Indeed, it is remarkable and very fairly to be adverted to as throwing light on the just sense of the general words 'belong- 'ing to a gang of dacoits,' that it is only very recently that it has been thought that the peculiar offence so designated could be held to include a participation in the ordinary dacoities of Bengal. That participation is proved, as it could, so plainly and completely have been proved in the case of the present prisoner, by what is proof of the commission of distinct acts of crime. We have even in our Regulations a special provision already (Clause 4, Section IV. Regulation LIII. of 1803) for a mere

* "In the case of dacoits by profession, as in that of the thugs, the necessity of collecting at one point, judicial proof, sufficient to ensure their conviction for a specific dacoity, was found to involve so much of trouble and loss to the persons who had suffered most from their crimes, that the necessity of making Act XXX. of 1836, which had been passed by the Legislative Council of India for thugs, applicable also to professional dacoits, became manifest in the early part of our proceedings to those best acquainted with the difficulties we had to contend with. This Act rendered any person, who should be convicted of 'having belonged to a gang of thugs, liable to the penalty of imprisonment for life; and any person accused of the offence made punishable by the Act, liable to be tried by any court, which would have been competent to try him, if his offence had been committed within the district where that court sits; and dispensed with the *futwa* of the Mahomedan law officer. To convict a person of having belonged to a gang of thugs, it was necessary to prove, not only that he belonged to a colony or family of thugs, but that he had been actually out on a thug expedition, with a gang of thugs, by whom murders had been perpetrated, and taken a part in their proceedings.

"In both cases the gang proceeded many hundred miles from their homes to commit their crimes, and to convict them of the specific offence, it was necessary to bring the persons who had suffered from these distant points, to appear against them in the courts to which they were to be finally committed for trial. To avoid the great loss and inconvenience which the necessity of this attendance involved, it was found that the sufferers did all in their power to conceal their sufferings, and often denied that they had ever been attacked, when the dearest members of their families had been killed or wounded, and all they had in the world had been carried off. In consequence Act XXIV. of 1843 was passed by the Legislative Council, declaring, Act XXX. of 1836 applicable to dacoits by profession as well as to thugs."

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'going forth with a gang of robbers for the purpose of committing robbery.' It could not have been intended to go beyond this, and make what can be called no more than an occasional keeping of bad company so highly penal. Plainly, in our judgment, the offence we are considering is quite of a separate class; and it requires evidence of a 'belonging' or membership, which cannot be taken, as we think, on the ordinary meaning of the words themselves, to refer to a body of an uncertain, or merely casual, existence or association.

"After what has been above said, it will be obvious that we by no means found our opinion on the mere fact that the preamble of Act XXIV. of 1843 speaks of 'professional dacoits who belong to certain tribes.' As far as the enacting words of an Act can reach, by a fair and clear implication consistent with the principle of the Act, they are not to be restricted by incidental expressions in a preamble. If there were in India gangs or communities, habitually associated for the systematic commission of dacoity, other than members of the hereditary dacoit tribes, this Act would certainly, in our judgment, extend to their case. But in fact, there are no such communities. The existence of communities of that kind in this country, depends on superstitious ties, and family connexions, and habits, and hence, in practice, it is only to members of these professional tribes that occasions for applying the law can arise.

"It seems to us that there is a danger in the interpretation of penal, even more than other, Acts, not less than though different from a too rigid regard to a preamble. In construing doubtful words in such Acts, we should look to the genuine sense of the Acts, as a whole, and with reference to their declared object, and not to any general and vague sense which some expressions taken by themselves might possibly bear. It is, we think, our duty to use all the lights we can draw from the entire frame and purport of the Acts, to ascertain and fix the exact and accurate sense of the particular words.

"In conformity with the above views, we remark that there is one provision of Act XXIV. of 1843, which assuredly applies to dacoits other than members of associated communities. Section II. of the Act plainly declares that *the offence of dacoity with or without murder* (without saying by whom committed) shall, like the other offences specified in the Act, be triable by the judge of any zillah, and without any *futwa* from any law officer. Where words are thus distinct and certain, we would construe and apply them according to that explicit meaning. But it is because the words 'having belonged, either before or after the passing of the Act, to any gang of dacoits, either within or without the territories of the East India Company,' are by no means words of clear and indisputable meaning, that

we have to construe them according to the whole context of the laws upon kindred subjects, in which, and in which alone, the same words are used, and to the expressed as well as reasonable intent and policy of such special enactments. The including the specific act of dacoity by whomsoever committed, among the offences triable in that peculiar manner, may have been intentional or it may have been from oversight. In either case it does not affect the construction of the words upon which the present discussion turns.

"So again, it is true that the word gang of dacoits is employed in other Regulations in reference to a party of men engaged upon one occasion only in the commission of dacoity. No doubt the mere word 'gang' has been often used in our law, in conformity with its ordinary meaning, in that signification. We have here, however, to construe larger words, *viz*, 'belonging to a gang' in a particular connected series of enactments, and with the particular incidents; and these words alike in themselves, and in the relation in which they stand, seem to us to be quite inapplicable to a single casual association for the perpetration of a dacoity. If such a single or any mere casual or occasional association had been intended to be included in the Act, there could surely have been no difficulty in using some direct expression to that effect; and the legislature, in drawing the Act, would certainly, at least, have avoided the mere copying the terms, and specifically declaring that it was only extending the provisions of a law, which has, beyond a question, exclusive regard to the associated thug communities, or distinct societies. Language is not so poor as that (however difficult the present discussion shows that it is to select words to which widely divergent meanings may not be attached) the legislature should have literally adopted terms, of which the design and scope were so radically different.

"To us the mere term 'belonging' seems manifestly inconsistent with one casual association. And if we look further to the consequences of allowing such an interpretation to be given to them, we find that it would lead to this result, that a person who had once, at any period, even before the passing of the Act XXIV. of 1843, with a criminal mental intent joined others, who had assembled for the purpose of committing a dacoity, but had left them before they went forth to execute that purpose, would be punishable up to the limit of transportation for life, while what is undoubtedly the greater crime, the *going forth with a gang for that purpose*, although the party may be apprehended before the dacoity is committed or attempted, is, under our special law before cited (Clause 4, Section IV. Regulation LIII. of 1803,) punishable only up to a declared maximum limit of imprisonment for seven (7) years. This we believe to

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be a result which, whatever opinion different minds may form as to the possible meaning of particular words, must go far to prove that 'belonging to a gang' can have no such meaning as a single association with a gang or party, banded or assembled with a view to the commission of dacoity upon some one occasion.

The Government advocate was pressed by us with this question, whether he desired to contend that such a single association came within the penalties of the Act? And the tenor of his answer, which was that the point did not arise on the confession of the present prisoner (who has generally acknowledged the actual joining in a number of dacoities) plainly implied that he was not prepared to argue in support of that proposition.

"If then the 'belonging to a gang' cannot be justly and correctly applied to a single association with any one occasional dacoit party, what test whatever is there by which the courts can be safely guided in applying this most rigorous penal law, short of that which we think to be the only true one, *viz.*, the understanding the words to relate exclusively to habitually associated gangs living in a distinct community, and united together in a manner similar to that in which the thug communities, colonies, or gangs, are united together, for the professional or systematic pursuit of dacoit parties? We consider that that is the sense positively attached to the words by the place which Act XXIV. of 1843 holds in a series of acts of a like character, applying to thugs and other associated gangs of professional robbers, and by the express declaration of what the Act was designed to do, which is contained in the last sentence of its preamble. If, however, our opinion were not fixed by that circumstance and declaration, we should still be compelled to the same conclusion by the utter uncertainty and arbitrary nature of any attempt to explain the words in any other manner. The word 'gang,' as referring to an organized body of some fixed character and continuance, has no known and definite sense either in legal or in ordinary language. The definition, as has been before said, which has been suggested by the Government advocate in reference to the confession on the present trial, is that of having frequently committed dacoities with certain persons under certain sirdars. But the question instantly arises. How frequently? How often with the same, or what number of the same persons? Or how often under merely the same sirdars? We put aside for the moment the actual commission of dacoity, which may be treated as an accidental circumstance of the present case. But upon what intelligible principle of law, especially in regard to an Act of so severe and special a penal character, the questions above stated can be safely determined by the courts so as to justify the infliction.

tion of a sentence under the Act, we are at a loss to conjecture. The fact of a gang being called in loose speech by a particular name as the gang of certain sirdars, obviously supplies no certainty. A gang, or clique, or party, or faction, may be often spoken of as that of particular persons, while there may, in truth exist no such separate organized connexion or body of men at all, and of course *mere leaders by themselves* cannot constitute a *gang*, while even if some uncertain and fluctuating number of men may have, more or less frequently, acted under particular leaders, there will still be no definable criterion by which to judge either of the existence of any substantial and distinct connexion or united body so as to constitute a 'gang,' or of any person having so joined himself to it as to be punishable in law for having become a member of, or belonging to it.

"There remains this possible construction, which appears to have been that adopted by a judge of the court in the sentences passed* by him in three cases on the 16th and 17th February last, in which the prisoners confessed to having actually committed, one, eleven or twelve, another, an unspecified number, and a third, thirty or thirty-two dacoities, in the districts round Calcutta, under a leader named Ram Thakoor. The view upon which the prisoners were convicted under the Act in these cases, is thus stated in the remarks on the trial of one of them, Haran Bagdee, page 217,—'His repeated confessions, particularizing the circumstances of several dacoities in which he had been 'concerned' (a number not exactly stated, of them under the leader, Ram Thakoor, and in company, on a number of occasions, also not precisely stated, with other prisoners, who were likewise convicted) 'justify his conviction as a professional dacoit, under Act XXIV. of 1843.' It may be argued that here there can be no doubt, as several persons admitted the commission, generally together, of at least some considerable number of dacoities under one leader, that they can be fairly held to have 'belonged to a gang of dacoits.' Our remark is, independently of what seems to us the conclusive one, as to the peculiar meaning authoritatively given to the words by the special thuggee and dacoity laws, that this circumstance of the actual commission of dacoity is obviously not essential to the offence of a mere 'belonging to a gang' in whatever sense those words may be taken; that no certainty is supplied in the explanation of the words by a construction which depends on proof that the parties took part in such actual commission; that the parties are manifestly punishable, under other laws and just as readily and severely† as under this law, upon proof of their having so par-

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* See Nizamut Adawlut Reports for February 1852, pages 216 to 218.

† See Section III. Regulation VIII. of 1808, Regulation I. of 1831, and Section VI. Act XXXI. of 1841.

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ticipated in dacoities, but that the acting together of how many persons under the same, or how many of the same leaders, in how many instances, is required to constitute a 'belonging to a gang' so as to fall within the special provisions of this Act, is left just as indeterminate as if there had been no proof of any dacoities having been committed. The same parties *may* be punishable both under this Act, and under the Acts which declare penalties for the perpetration of dacoity; but evidence is not afforded that they are punishable under this Act, merely because they have committed, on some varying number of occasions, dacoities together, or under the same guidance. This Act is one under which men are specially punishable upon facts which furnish an *irresistible presumption that they must be dacoits*. But it is not an Act designed for the punishment and trial of persons against whom there is proof that they *positively are* dacoits. For these cases there are other, and amply effective, laws. So thugs, against whom there is proof of specific acts of thuggee, are ordinarily and properly tried under one first count of murder by thuggee, and then, by way of precaution, in the event of failure of the first count, on a second and separate general count of 'belonging to a gang of thugs,' or 'being a thug by profession,' as it is constantly expressed. The present trial is a marked instance of what we must regard as a dangerous misapplication, arising from the erroneous construction of this special law. Here is a person who has in another confession *not laid before the court*, acknowledged, as is stated by himself, that he has been concerned in twenty or twenty-five different dacoities. Upon these cases there ought to have been supplied the means of check or of corroborative proof, by reference to all the independent sources of inquiry and evidence which such a number of cases must admit of. But these tests of the alleged positive and repeated commission of crime are all kept back. There is no charge as to the numerous dacoities, and the prisoner is charged only under an Act creating an offence, which, whatever its precise character may be supposed to be, yet clearly rests upon minor grounds of *presumption alone*. The prisoner confesses in three words, that he has been '*dakaiteer dole bhookto*,' that is included or comprehended in a gang or party of dacoits, and upon these words, which may possibly afford a conveniently compendious mode of expression to magistrates, but which can convey no positively clear and definite idea to any mind, all investigation as to his numerous supposed acts of crime, and all specification even of what particular acts he acknowledges, are dispensed with. We must very decidedly dissent from a view which admits such an interpretation and application of the Act to be an accurate one.

¶ Upon all these grounds, which we have stated in such detail, because the principle involved appears to us to be of grave

importance, we hold that the offence of 'belonging to a gang of 'dacoits' under Act XXIV. of 1843, applies only to dacoits who are, or have been, members of communities living in habitual association for the perpetration of dacoity, and we consider the prisoner to be entitled to acquittal and release on the charge laid against him.

"We have formed, we should add, that opinion in this case although the prisoner has pleaded 'guilty' to the charge in the vague words in which it is stated. It is the duty of the court, as we conceive, to determine whether the particular acts which appear regarding the prisoner are such as justly to bring him within the correct meaning of the Act from which the words are taken. No advantage should be taken, of course, of a prisoner's ignorant admissions. And we have to settle also the true meaning of the words, as they may be made a ground of charge against other persons.

P. S.—"Since the above opinion was drawn, we have found a statement regarding the true construction of Act XXIV. of 1843, which is of peculiar importance, as it is that of the Legislative Member of the Council by whom the Act was, doubtless, framed. We cite this by way only of general illustration of the argument which we draw from the terms of the Act itself. The words, it will be seen, speak of what the sense of the Act is, not merely of what it was intended to be. They are in paras. 537 to 539 of the Report by the Honorable Mr. Cameron and Mr. D. Elliott, on the Indian Penal Code of November 5, 1846.

(537.) " 'Latey the law has been altered and made more 'stringent even than Colonel Sleeman proposed. By Act XXIV. 'of 1843—'Whoever shall be proved to have belonged to any 'gang of dacoits shall be punished with transportation for life, 'or with imprisonment for any less term, with hard labor.' "

(538.) " '*The intention was to apply to dacoity, the law in 'force for the prevention of thuggee*, but it differs in the punish- 'ment, as transportation for life is not authorized in cases of 'thuggee.' "

(539.) " 'If *this very stringent law* be continued, and it 'may be presumed that the grounds upon which it was so 'recently deemed to be necessary are such as will justify its 'continuance for the present, though it may be hoped that 'eventually it may be mitigated, we would suggest, with reference 'particularly to the observations of Mr. Thomas as to the con- 'stitution of these gangs, *that some definition be given of what 'is meant by a person belonging to a gang of dacoits. The 'preamble to Act XXIV. of 1843 shows that the phrase is 'intended to designate not a person who ordinarily lives by 'honest labor, and who on some occasion has been tempted to 'join himself to a gang and to take a subordinate part in a*

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' robbery committed by such gang in the manner described by Mr. Thomas, but one, *who has habitually associated with a gang of 'professional dacoits,' systematically 'employed ' carrying on their lawless pursuits in different parts of the ' country,' accompanying them in their expeditions and actively ' participating in their operations.'*"

MR. R. H. MYTTON.—"My opinion is generally in accordance with that of Sir Robert Barlow, Bart., and Mr. Jackson, on this case.

"I concur with them as to the rule by which laws should be interpreted, and in its application to the law in question, Act XXIV. of 1843. It is entitled a law for the Suppression of Dacoity and not any particular class of dacoity.

"The first section is, as plain as words can make it, applicable to persons belonging to *any* gang of dacoits, and not restricted to any *such* gang as is alluded to in the preamble, the depredations of which class of marauders may have been the immediate motive for the passing of the law.

"It is quite consistent to pass a law in consequence of the injury to society caused by crimes committed by one class of disturbers of the peace, and at the same time to make it so comprehensive as to include persons of any other class, should they commit the same crime.

"Dacoity by a gang of Bengalee dacoits is quite as dreadful a crime as dacoity by Budhuks.

"The court has ruled, by Circular Order 171 of volume III., that the last Clause of Act XXIV. of 1843 is not restricted in its application by the preamble to dacoities committed by any particular class of dacoits. It would therefore, in my opinion, be inconsistent to rule that the first section is so restricted.

"Much stress has been laid on the circumstance of the *thuggee* law being restricted in its application to persons *habitually* associated, and it has been argued that from analogy the same restriction ought to be held to apply to Act XXIV. of 1843, but to my mind this circumstance leads to an opposite conclusion. The law defining the word *thug* was passed five years after that for the suppression of dacoity, and had the legislature intended that the latter should only apply to dacoits habitually associated, they would have taken the opportunity thus to define the word *dacoit* as used in Act XXIV. of 1843. By Act XI. of 1848, any person proved to have belonged to any *wandering* gang of persons *associated* for theft is liable to punishment. No such restrictive words as those underlined occur in the Dacoity Act. Contrasting, therefore, one with the other, one is applicable to a particular class of thieves only, the other to all classes of dacoits.

"The prisoner is proved to have accompanied a gang who actually committed several dacoities. He has, therefore, in my

opinion, been properly convicted of belonging to a gang of dacoits. The question is not before us whether a gang of persons banded together for the purpose of committing a dacoity, but who have not committed a dacoity, is a gang within the meaning of the law. I therefore abstain from giving an opinion on it.

"The proposed sentence has my concurrence."

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PRESENT:

A. J. M. MILLS, Esq., *Officiating Judge.*

KORN MANJEE

versus • •

SOOFUL KAMAR (No. 19), SEEBOO SINGH (No. 20),
ONOOOP KAMAR (No. 21), MOHUN KAMAR (No. 22)
AND BHATOO KAMAR (No. 23).

CRIME CHARGED.—1st count, Nos. 19 to 23, burglary and theft of property valued at rupees 7-15-0, in the house of the prosecutor; 2nd count, accomplices in the said burglary and theft; 3rd count, accessories in the said burglary and theft before and after the fact; 4th count, No. 19, knowingly receiving and retaining stolen property obtained by the said burglary and theft; and 5th count, having in his possession a *sind kuttee*.

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MAR and
others.

There being nothing to support the prisoners' plea, that they had not confessed, their conviction and sentence was affirmed.

CRIME ESTABLISHED.—Burglary and theft.

Committing Officer, Mr. G. C. S. Chapman, deputy magistrate of Deoghur, Beerbhoom.

Tried before Mr. R. B. Garrett, officiating sessions judge of Beerbhoom, on the 19th August 1852.

Remarks by the officiating sessions judge.—"The house of the prosecutor was burglariously entered on the night of the 7th May last, and property stolen therefrom to the value of rupees 7-15-0.

"On the morning after the occurrence, the prosecutor and some of his neighbours tracked the robbers to the house of Sooful Kamar, in the village of Jamjoree, where they found the stolen property, and the prisoners Sooful Kamar, Mohun Kamar and Bhatoo Kamar, whom they apprehended and conveyed to the darogah, after receiving the orders of the ghatwal to that effect. The prisoners confessed, and implicated Onoop Kamar and Seeboo Singh, who also admitted their guilt, and they all repeated their confessions before the deputy magistrate. In this court they pleaded 'not guilty'; but with the exception of Bhatoo Kamar who complained of ill-treatment on the part of the police, offered no excuse. Their confessions were taken down in the presence of the deputy magistrate on the 24th May, and on the 30th June, when they were committed to the sessions, they named no witnesses to clear themselves from the charge. I am there-

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fore of opinion that their confessions may be considered trustworthy, and in concurrence with the finding of the law officer, who pronounces them all guilty, I sentence Sooful Kamar, Seeboo Singh, and Mohun Kamar to eighteen (18) months' imprisonment, and Bhatoo Kamar, in consideration of his youth, to six (6) months' imprisonment, with labor in irons. A consolidated sentence* has been passed upon Onoop Kamar convicted in the preceding case."

Remarks by the Nizamut Adawlut.—(Present: Mr. A. J. M. Mills.)—"The prisoners Seeboo Singh, Mohun Kamar, and Sooful Kamar have appealed. They deny their confessions, and Seeboo Singh pleads that he was maltreated by the police; but there is nothing on the record to support their assertions, and I see no reason to question the propriety of the conviction. I reject the appeal."

PRESENT:

A. J. M. MILLS, Esq., *Officiating Judge.*

ESHUR CHUNDER DUTT, SHIB PROSAUD DUTT AND
GOVERNMENT,

versus

TEETOO SHEIKH CHOWKEEDAR (No. 1) AND GOPAL
SHEIKH CHOWKEEDAR (No. 2).

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Case of
TEETOO
SHEIKH and
another.

The prisoners were acquitted, the evidence* for the prosecution being considered unsatisfactory.

CRIME CHARGED.—1st count, Nos. 1 and 2, dacoity, with wounding, in the houses of the prosecutors Eshur Chunder and Shib Prosaud, in which property to the value of rupees 61-12-6 was plundered, the prisoners being employed as village chowkeedars; 2nd count, No. 2 receiving and keeping a part of the property, knowing it to have been obtained in the above dacoity.

CRIME ESTABLISHED.—1st count, Nos. 1 and 2, dacoity attended with wounding in the houses of the prosecutors Eshur Chunder Dutt and Shib Prosaud Dutt, in which property to the amount of rupees 61-12-6 was plundered; and 2nd count, No. 2, knowingly receiving a part of the plundered property.

Committing Officer, Mr. G. H. Ricketts, officiating magistrate of Nuddea.

Tried before Mr. J. C. Brown, sessions judge of Nuddea, on the 10th September 1852.

Remarks by the sessions judge.—"Although Teetoo Sheikh (prisoner No. 1) and Gopal Sheikh (prisoner No. 2) who are charged with the commission of the crime of dacoity attended with wounding and the plunder of property belonging to the prosecutors, and

* Sentenced by the lower court to seven (7) years' imprisonment, with labor in irons.

prisoner No. 2 is, in addition, charged with receiving and having in his possession a portion of the plundered property, having criminal knowledge of its having been obtained in the above-mentioned dacoity, both the prisoners being at the time that the above offences were committed individually and separately employed as village chowkedars, have pleaded 'not guilty' to the above indictments, yet, from the statements given on oath by Eshur Chunder Dutt and Shib Prosaud Dutt, prosecutors, and the evidence of five credible eye-witnesses, it is clearly proved that the crime of dacoity was committed in the houses of both the prosecutors as charged, and that the prosecutor Shib Prosaud Dutt was wounded then and there by the dacoits on his right side, also that Kaloo Sheikh, eye-witness No. 3, was wounded on his left side, both of them with *surkees* (or pikes), and that both the prisoners were engaged, with ten or twelve other persons unknown, in the said dacoity. Further, it is proved that a musquito curtain, found in the house of prisoner No. 2, by and in the presence of witnesses Nos. 9 and 10, and recognized as belonging to Eshur Chunder Dutt, prosecutor, by witnesses Nos. 5 and 11, was a part and portion of the property plundered during the dacoity. Prisoner No. 1 has in his defence simply denied the charge upon which he has been committed. He has not cross-questioned the witnesses for the prosecution, nor named any witnesses in exculpation, and prisoner No. 2 stated in his defence that he was on his beat when the dacoities were said to have been committed, and has called several persons to substantiate his defence, and also to prove that the musquito curtain found in his house was his own property: he has failed entirely to prove his defence. The prisoners after being recognized were looked for in their houses, and could not be found. I accordingly convict both the prisoners, being at the time village chowkedars, of having been concerned in two distinct dacoities in the houses of the two prosecutors, in which Shib Prosaud Dutt and others were wounded, and property, the value of which has been estimated at rupees 61-12-6, was plundered, and prisoner No. 2, of also receiving and having in his possession a part of the plundered property knowing it to be such, and sentence them each accordingly, to fourteen (14) years' imprisonment, with banishment, and hard labor in irons."

Remarks by the Nizamut Adawlut.—(Present: Mr. A. J. M. Mills.)—"The prisoners have appealed. They are chowkedars, one of the village in which the dacoity was committed, and the other of the village adjoining. They allege that the prosecutors have brought a false charge against them, supporting it with false evidence from motives of enmity.

"The prosecutors swear to recognizing the prisoners as they entered the premises, and describe the weapons which each carried in his hands. The five witnesses, who are dependants,

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or persons under the influence of the prosecutors, depose to the same effect, and so minutely consistent is the statement of all, that I cannot but think the case has been got up by the prosecutors. The musquito curtain found in the house of prisoner No. 2, was not in any way concealed; it is a common article, worth eleven annas, and not capable of recognition. It is too, most improbable, that the prisoners, whose persons are well known to the prosecutors, should have, without disguising their faces, exposed themselves to almost certain detection, by entering the house. Not satisfied with the evidence as to the point of recognition, I acquit the prisoners and direct their release."

PRESENT :

W. B. JACKSON, Esq., *Judge*.

GOVERNMENT, KHAPOO SHAH AND BOODHA

versus

BUKOO CHOWKEEDAR.

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Case of
BUKOO CHOW-
KEEDAR.

On account of the probability that the prisoner had good grounds for suspecting his wife of infidelity, he was, on conviction of killing her and her alleged paramour, only sentenced to transportation for life.

CRIME CHARGED.—Wilful murder of Jhuroo and Musst. Nergendee, on the 25th July 1852, corresponding with 11th Sawun 1259 B. S.

Committing Officer, Mr. C. E. Lance, officiating magistrate of Rungpore.

Tried before Mr. T. Wyatt, sessions judge of Rungpore, on the 22nd September 1852.

Remarks by the sessions judge.—“There are two prosecutors (besides including the Government out of form), one the father of the deceased Jhuroo, and the other the father-in-law of the deceased Musst. Nergendee, (the wife of the prisoner), who having been absent at the time of the event, his statement is merely founded on what he heard.

“The substance of the statement of the prosecutor Khapoo Shah, the father of the deceased Jhuroo, is, that early on Sunday morning (25th July), as he was sitting in his yard smoking, his attention was attracted by a betel tree near his house having been violently shaken; when on going out of his yard to see the cause, he found his son Jhuroo, deceased, (one of the two persons murdered in this case) had, apparently, come against it and had fallen on the ground underneath, with his throat cut across, in breadth of eight or ten fingers, which was profusely bleeding, immediately after which he (deceased) expired; that he (prosecutor) then alarmed the neighbourhood, on which Newaz Akhund, Kona, Kanoo, Burumdee and Jana arrived. Newaz, after going to the prisoner's house, returned, saying he (prisoner) had done the deed, and had also cut his

wife's throat. On prosecutor asking the cause, Newaz said, 'Your son had committed adultery with his wife, whence he had murdered both; your son in the northern and his wife in the southern compartment of his house; that the prisoner was seated in his yard holding the knife with which he had perpetrated these deeds.' On hearing this, Kona and Kanoo proceeded to prisoner's house, the former taking the knife out of his (prisoner's) hand, after which they bound and took him to the house of Newaz Akhund, where he was made over to the custody of a police burkundauz who happened to be there. On the darogah being informed, he came to the spot the same day, held an inquest on the bodies, despatching them with the prisoner to the magistrate. The age of the deceased Jhurroo was about twenty, and that of Musst. Nergendee about fifteen or sixteen. Prosecutor adds that prisoner admitted before him having murdered his son for having committed adultery with his wife.

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"The prisoner pleads 'guilty' to the charge.

"These two witnesses, relatives of the prisoner, living on his premises, were awoke by the exclamation of the father of the deceased Jhurroo (whose house was only

Witnesses Nos. 16 and 17.

divided from the prisoner's by a ditch), as to who had cut his son's throat, and hastening towards his house saw Jhurroo a corpse, with his throat cut across. On witnesses returning home, they saw the prisoner seated in his yard with a knife in his hand, and his clothes and body covered with blood, when he admitted having cut the throats of both Jhurroo and Nergendee, between whom witnesses think an illicit intercourse existed,

"These witnesses (as near neighbours of the prosecutor) confirm the statement of the prosecutor as severally relating to them.

Witnesses Nos. 18, 19 and 20.

"Dr. Walter, the civil assistant surgeon, deposed that both the bodies of Jhurroo and a woman, named Nergendee, sent to him on the 27th July last, were very

Deposition of the civil assistant surgeon.

decomposed, but that there was sufficient evidence of an incised wound across the throat of each of the subjects, and that it was very probable the wounds were inflicted by the knife on the trial, which were quite calculated to produce death.

"The subscribing witnesses to the Mofussil confession of the prisoner, depose to the prisoner having voluntarily confessed to the darogah having cut, with the

Mofussil confession of the prisoner.

knife on the trial, the throats of Jhurroo and his wife Nergendee, on the morning of the 25th July last, or 11th Sawun 1259,

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(both were asleep) in separate compartments of his premises, owing to their having committed adultery that morning, while he had shortly absented himself from his yard, in order to relieve nature, he having been acquainted since Assar preceding of the illicit intercourse that had subsisted between them, when he meditated both their deaths.

"The prisoner's confession before the acting magistrate was in substance, that Jhuroo, deceased, having been a neighbour, had had, before the event, adulterous intercourse with his wife, which being discovered, he had bid him, if he valued his life, not to repeat the offence, when he, (Jhuroo,) said nothing. Subsequently, viz., on the Saturday night in question, in the month of Sawun, he and his wife slept together in the compartment facing the south, and Jhuroo slept in a compartment facing the north. On the following morning, prisoner having gone to relieve nature at the back of the room in which Jhuroo slept, saw Jhuroo go into his wife's bed-room and commit adultery with her, and *hastily return to his own room*. Not being able to endure this outrage, *he, (prisoner,) went to the eastern compartment and fetched a knife*, and entering the room in which Jhuroo was, saw him lying down pretending to be asleep, when he cut his throat, and then proceeding to his wife's room, cut her throat too while in bed, from which wounds they both died. Prisoner repeats that, having detected the parties in question in adultery, not being able to restrain his anger, he murdered them.

"In his defence, the prisoner goes beyond his confessions by stating that, having actually detected the parties in adultery *in his bed-room*, he went and fetched the knife out of the eastern compartment and cut both their throats while in the act of sexual intercourse there. The prisoner has no evidence.

Futwa of the law officer.

"The *futwa* finds the prisoner guilty of the charge and considers him liable to capital punishment

by *kissas*.

Opinion of the sessions judge and his recommendation.

"I concur in the conviction, and under the severe provocation which attended the prisoner, would only recommend him to be sentenced to transportation beyond sea for life, with labor and irons."

Remarks by the Nizamut Adawlut.—(Present: Mr. W. B. Jackson.)—"It is established by the prisoner's repeated confessions that he killed his wife Nergendee, and Jhuroo, as they lay asleep in bed in different rooms; he says that he saw them

in the act of adultery together through a hole in the *tattee*; and having waited till they separated and were both asleep, he went with a sword and killed first Jhuroo and then his wife, by cutting their throats; they each got up and ran some little distance and fell dead; there is no proof that the prisoner did see them committing adultery, as he states; but he had before threatened his wife. I convict the prisoner of murder, and it remains only to consider whether he shall be sentenced capitally or to imprisonment for life; it is plain that even under the Mahomedan law, the prisoner's act is not justifiable, as he did not kill the parties when he found them in the act; but it is still to be considered whether any credit whatever is to be attached to the prisoner's assertion that he saw the parties in the act; if such an assertion were admitted as evidence, it might always be made; on the other hand, it is a fact to which no evidence is likely to be available. I have no doubt that the act was committed from jealousy; and as there is nothing in the case to render the fact improbable, I think it may be admitted as a reason for not inflicting capital punishment, that there is a probability that he had some strong ground of suspicion. Had he killed them in the act, there would have been evidence of the act from the position of the bodies and the nature of the wounds; and this appears to be the reason for the distinction according to the Mahomedan law. I sentence the prisoner to transportation for life.

"I observe that prisoner's father is made one of the prosecutors in this case, although he declared he has no charge to make: it is hardly necessary to point out the glaring impropriety of making a father prosecute his son for a capital crime."

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Case of
BUKOO CHOW-
KEDAR.

PRESENT :

W. B. JACKSON, Esq., *Judge*.

GOVERNMENT AND KRISTODHUN MUNDUL

, *versus*

BUXEE SHEIKH.

1852.

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Case of
BUXEE
SHEIKH.Sentence of
five years' im-
prisonment
for burglary
upheld against
an old offen-
der.

CRIME CHARGED.—Burglary in the nouse of the prosecutor, Kristodhun Mundul, from which property to the value of 14 annas was stolen.

CRIME ESTABLISHED.—Burglary and theft.

Committing Officer, Mr.-C. F. Carnac, officiating magistrate of Moorshedabad.

Tried before Mr. D. I. Money, sessions judge of Moorsheda-
bad, on the 10th August 1852.

Remarks by the sessions judge.—“On the night of the 20th July last, Manick Chowkeedar, returning from his rounds, heard a noise and going near to the house of the prosecutor, saw the prisoner coming out with a stolen *lota*. He struck the prisoner on the head with a *lattice* and then arrested him with the aid of the prosecutor. The prisoner confessed his guilt; and a *sind lattice* was found in the hole he had made in the wall, the following day. Before the magistrate the prisoner repeated his confession, which was proved by the attesting witnesses to have been given voluntarily. The law officer convicted the prisoner of burglary and theft, and declared him liable to *tazeer*. I concurred in the finding; and as the prisoner had once before been imprisoned for three years on conviction of burglary, I sentenced him as stated.”

Sentence passed by the lower court.—Five (5) years' imprisonment, with labor and irons.

Remarks by the Nizamut Adawlut.—(Present: Mr. W. B. Jackson.)—“The prisoner has been before convicted, and in this case confessed having cut a hole in the wall, though he had not stolen anything. I see no reason to interfere with the sentence.”

PRESENT :

R. H. MYTTON, Esq., *Officiating Judge.*

ALLADEE KHAN

versus

GURRIBOOLLAH.

CRIME CHARGED.—Wilful murder of Musst. Abjan, sister of the prosecutor.

Committing Officer, Mr. E. Sandys, magistrate of Tipperah.

Tried before Mr. H. C. Metcalfe, sessions judge of Tipperah, on the 4th October 1852.

Remarks by the sessions judge.—“ The prisoner was charged with the wilful murder of his wife, Musst. Abjan, a girl of about fourteen years of age, who is stated to have been suffering for some months previous to the occurrence from fever and enlargement of the spleen, although latterly somewhat recovered.

“ It appears that on the evening of the 5th of September, the deceased and the prisoner’s mother, Musst. Kewa, the second witness to the fact, had a dispute connected with preparing the family meal, in the course of which the former broke the cooking utensils.

“ Her husband, the prisoner, who was present at the time, left the house in anger; but returning about 7 P. M., the dispute seems to have been renewed, and he struck her on the face, kicked her two or three times on the ribs, and when she fell either stamped or pressed with his foot on her throat. She died on the spot, and the prisoner was taken into custody by his neighbours, and by them handed over to the police.

“ The prisoner pleaded ‘ *not guilty*. ’

“ The witnesses to the fact were two in number, Bukshee Beparee and Musst. Kewa. The first deposed that he hastened to the spot on hearing the deceased girl’s outcries, and arrived in time to witness the prisoner inflict a final kick either on her side or stomach, he could not exactly discern which, while she was lying on the ground speechless and to all appearances dead. This witness was in fact at a loss to say whether she had not expired before the kick, he came in time to see, was inflicted.

“ The second eye-witness, Musst. Kewa, is the prisoner’s mother. She deposed to the exciting cause of the prisoner’s violence, namely, his anger with his wife in consequence of her conduct in quarrelling with his mother and breaking the cooking utensils; and that hearing, from the adjoining hut in which she

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LAH.

After blows and kicks, squeezing the throat of a woman with his foot, held to indicate intention to kill on the part of the prisoner; but the act being done in heat of blood occasioned by abuse, the killing held to amount only to culpable homicide.

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slept, a noise in that occupied by the prisoner and his wife, she hastened out and witnessed the entire assault from the first blow on the face, in consequence of which the deceased fell to the ground, to the final stamp on the neck. There was a contradiction here apparent between her statement of what took place, and that of the previous witness, Bukshee Beparee, which I am unable satisfactorily to reconcile. Musst. Kewa described both to me and to the magistrate the kicks in the side as preceding the stamp or pressure on the throat, which, according to her statement, formed the final act of violence, and it is obvious that if this be the correct version of the occurrence, Bukshee Beparee, who saw the prisoner kick the deceased, must have seen him also stamp on her throat, which he denies having done. Musst. Kewa, however, at the thanna deposed that the prisoner first stamped on the deceased's throat, and then kicked her in the side, which description of the scene is reconcilable with that given by Bukshee Beparee. Unfortunately the body was in so decomposed a state when it reached the thanna that it became necessary to bury it without delay; and no autopsy having taken place, an opinion as to the immediate cause of death must be very much conjectural. Rupture of the spleen, which was in a diseased state, may have taken place in consequence of the kicks on the side, or the violence applied to the throat, the extent of which is not clearly explained by the only witness present at the moment, may have caused death. I desired this witness, Musst. Kewa, to show me by action the degree of violence used, when she stamped with considerable force on the ground.

"The circumstantial evidence amounts to having heard of the death of the prisoner's wife, to having seen the corpse with marks of violence on the sides and throat, and to having heard the prisoner confess that he had knocked her down, and while lying on the ground had kicked her in the side and stamped upon her throat.

"The evidence to the state of the corpse affords little information, in consequence of its decomposed condition, but blood is stated to have been passing from the rectum.

"The prisoner confessed at the thanna that he had struck her on the head, and that she had fallen and died in consequence.

"Before the magistrate he stated that he had struck her on the head and had thrown her out of the house to the ground; that he had then kicked her twice on the right side, and finally stamped on her throat, and that she had died on the spot.

"Before me he confined himself to admitting that he had beaten the deceased, adding that his previous confessions had been correctly recorded.

"The Mahomedan law officer, acquitting the prisoner of wilful murder, convicted him of culpable homicide and declared him liable to *akoobut shudeed*.

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"I concur in this finding, which amounts to conviction of aggravated culpable homicide. The crime I conceive to be proved against the prisoner. There is no proof of intention to kill, but the prisoner's resentment was quite out of proportion to the petty cause from which it arose, and was shown in a very cruel form. His wife was not only young, but evidently in very bad health, and sufficient time elapsed between the original quarrel and the prisoner's return home for reflection on both points. But he appears to have kept his wrath warm and to have beaten her so cruelly that she died on the spot. I need not observe that the stamp on the throat furnishes a very serious feature to this case, as being a form of violence far beyond the limits of justifiable chastisement, and one that the prisoner must have known could not be used without the certainty of serious consequences.

"I would recommend that the prisoner should be sentenced to fourteen (14) years' imprisonment, in banishment, with labor and in irons."

Remarks by the Nizamut Adawlut.—(Present: Mr. R. H. Mytton).—"The sessions judge has given a very full account of this case, and of the evidence at the trial. The offence is probably held not to be wilful murder by Mahomedan law, on account of no deadly weapon having been used; but by Section LXXV. Regulation IX. of 1793, such a distinction is not binding. The question of degree of crime must be considered on general principles.

"I cannot agree with the sessions judge that there is no proof of intention to kill. The prisoner himself in the magistrate's court confessed that he knocked his wife down, kicked her, and then held down her throat with his foot, '*golay pai diya chapiya dhorilam*,' This last act to my mind clearly indicates an intention to kill.

"The provocation according to his account was his wife's disobedience of his orders to cook and quarrelling with his mother. The mother adds, that deceased abused her, calling her, '*sotiner sotin*,' insinuating, I suppose, that the prisoner was her paramour.

"The next important question to be determined is whether there occurred any interval for reflection after the quarrel between the two women. The sessions judge in his fourth paragraph states, that 'the prisoner left the house in anger and returned at 7 P. M., when the dispute seems to have been renewed.' I cannot discover from the record on what evidence this statement is founded.

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"The mother deposes in the sessions court that after the quarrel, while she and Assad went to sleep in one house, the prisoner and his wife went to sleep in another; that the quarrel took place after evening, which would be about 7 or 8 p. m., and that the homicide took place at one *puhur* of the night. Were it either, as the sessions judge states or the deposition of the above two witnesses would lead to believe, that an interval occurred sufficient for the passions to subside, I should undoubtedly hold this to be a case of wilful murder; but from the prisoner's confessions, it is to be inferred that no interval between the abuse, the breaking of the cooking pots, and the homicide occurred, and this inference is strengthened by the deposition of the mother in the *foujdaree* court. The evidence of the brother Assad in that stage throws no light on the point. I give the prisoner the benefit of the doubt whether any interval did or did not occur.

"Although therefore I hold that his intention was to kill, I understand the act to have been committed in sudden heat of blood, on provocation of abusive language to his mother, but which abuse deeply affected him by implication, and convict him of aggravated culpable homicide. This is in accordance with precedent in Nizamut Adawlut Reports, volume I. page 53.

"I do not, however, think that any sentence short of imprisonment in transportation for life, is adequate to an offence involving, as this does, such brutal violence to a female, and that female one he was bound to protect. A sentence to this effect will therefore be issued."

PRESENT :

A. J. M. MILLS, Esq., *Officiating Judge.*

GOVERNMENT

versus

SHIB CHURN, ALIAS RAM CHURN (No. 8), METOO (No. 9), LALAH (No. 10), JHUBBOO (No. 11) AND RAJUN (No. 12).

CRIME CHARGED.—1st count, riot with wilful murder of Bootun Hujam; 2nd count, riot with culpable homicide of Bootun Hujam.

CRIME ESTABLISHED.—Riot with culpable homicide of Bootun Hujam, deceased.

Committing Officer, Mr. R. O. Heywood, officiating magistrate of Bhaugulpore.

Tried before Mr. R. N. Farquharson, sessions judge of Bhaugulpore, on the 10th August 1852.

Remarks by the sessions judge.—“Prisoners all plead ‘not guilty.’”

“This case is as follows:

“Bootun Hujam, deceased, and Chytoo Dhanoock, witness No. 1, with some boatmen, were proceeding on a boat near the shore, when the prisoners, servants of the Narainpore indigo factory, came to the river side and tried to get the boat for the service of the factory. The boat not being readily given up, prisoners waded into the water to take forcible possession, and freely using their *lattees*, soon drove off the crew. Chytoo, witness No. 1, got on shore and ran off; the boatmen dropped into the water and swam away; Bootun, deceased, also dropped or was thrown into the water, and being disabled, either by a blow given before he left the boat, or, as there is some evidence to show, struck by one of the prisoners, when he was in the water, he quickly sunk and was drowned, though known to be, on ordinary occasions, a good swimmer. His body was found next day a short distance down the stream and duly identified; but being covered with mud and much swollen, nothing is elicited as to any wounds being visible, and on the corpse being sent into the station, the civil surgeon, owing to great decomposition, could make nothing of it.

“Bootun was seen to be sinking, and the boat with Jhubboo (prisoner No. 11) and another not recognized, went after him, but he had sunk before they came up. They then hastened across the river, and fastening the boat, ran off on the opposite side.

“Prisoners Shib Churn (No. 8), Metoo (No. 9) and Lalah (No. 10), were taken into custody at once by the villagers on the

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Case of SHIB CHURN and others.

The prisoners attempting to seize a boat by force, caused the death of the deceased, one of them having struck him in the water, so that he was drowned.

The sentence passed by the sessions judge, was reduced except as regarded the prisoner who dealt the blow.

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spot. Jhubboo and Rajun were apprehended a few days afterwards in their own houses.

"Shib Churn (prisoner No. 8), a servant of Mr. Beddy's, of Narainpore, states that he knows nothing of the matter, except that he was arrested close to the spot where some servants of his master were stopping a boat. He had gone into the market of Muderapore and then heard about the boat and was going to release it.

"Metoo (prisoner No. 9), a servant of Mr. Beddy's, of Narainpore, denies being concerned. He heard that a boat was carrying off one of the sahib's servants and went to release him, when he was arrested by the villagers.

"Lalah (prisoner No. 10), denies being concerned; was going to buy mangoes; when he came to Bulha, heard that there had been a disturbance and a murder, and was arrested by the villagers. Is not a servant of Narainpore.

"Jhubboo (prisoner No. 11), is a servant (bheesty) of Mr. Beddy's, of Narainpore; went to the Muderapore market and heard that a man was drowned; went with the crowd to see what was the matter; saw nothing, and returned to his own house.

"Rajun (prisoner No. 12) is a servant (coolly) of Mr. Beddy's, of Narainpore; saw Chytoo on the boat at Muderapore; asked him to take us six men (not the other prisoners), across the water, which he agreed to do, when we got to Bulha, Chytoo and the others on the boat began to beat us, when we got out and went back to Muderapore Bazar. Muderapore is about half a coss from Bulha, on the same side of the river.

"The witnesses called to depose to having met prisoners in the market, all deny having been in the market on the day in question. Those examined as to character speak well of prisoners.

"The jury bring in a verdict 'that there is evidence to prove an assault, but that the crime of prisoners does not amount to that charged in either of the counts in the indictment.' Their verdict is tantamount to an acquittal.

"I differ altogether from this verdict, and consider it fully proved that in the attempt of prisoners to take forcible possession of the boat, Bootun, deceased, met with his death at their hands. I convict them on the second count of riot with culpable homicide, and sentence all the prisoners to five (5) years' imprisonment, with labor in irons. This crime, as regards the homicide, was unpremeditated, and an attempt to save the drowning man by one of the prisoners is proved in evidence; hence mitigation of the punishment.

"The magistrate, in explanation of his committal for murder, quotes the Nizamut's remarks in the case of Dhunye Paramanick

versus Usman Talookdar, February 20th 1852, page 238 of the Reports. The case, however, is of somewhat different complexion. There was here no premeditation of injury to the person. The death of Bootun was in some measure accidental, and though occasioned by the prisoners in prosecution of a highly illegal and oppressive act, the crime does not, I think, in any light amount to murder.

"The villagers who were most active in apprehending prisoners Nos. 8, 9 and 10, deserve to be rewarded for their promptitude and energy. I have therefore ordered 5 rupees each (in all 15 rupees) to be given to Govind Munder, Luckmeer Khan and Sheikh Gongoo."

Sentence passed by the lower court.—Each, five (5) years' imprisonment, with labor in irons.

Remarks by the Nizamut Adawlut.—(Present: Mr. A. J. M. Mills).—"The prisoners have appealed. Their appeal rests on the grounds advanced on the trial, which are not substantiated. It is in evidence that the prisoners attempted illegally and violently to take possession of the boat, in which the deceased was, for the service of the factory, and in the prosecution of this act assaulted the deceased and the boatmen. It is proved by the concurrent testimony of three witnesses that the deceased was struck and thrown into the water; that he was struck one blow while there by the prisoner Rajun, with a club; that he floated a few yards and then sank, though an expert swimmer, and was seen no more. The body was too decomposed to admit of an examination with the view to discover the actual cause of death, and it exhibited no external marks of blows; but the presumption arising from the facts above stated is strong, that the deceased, whether he received the fatal blow before or after he fell into the water, met his death at the hands of the prisoners. The case is not one of murder or of riot with murder, but assault attended with culpable homicide. The act was suddenly and unpremeditatedly done, and there was no simultaneous assemblage of persons for the purpose of executing an unlawful purpose, which constitutes the crime of riot. The prisoners, servants of the factory, wished to cross the river, and, as the deceased and the boatmen would not consent to take them in their boat, they tried to seize the boat and assaulted the boatmen, one of whom was killed. I convict the prisoners of being accomplices in the culpable homicide of the deceased and confirm the sentence passed on Rajun, who by striking the deceased while in the water, evinced a reckless disregard of the consequences, and with reference to the lesser degree of criminality of the other prisoners, reduce that passed on them, to three (3) years' imprisonment with labor, if not redeemed in each case by the payment of a fine of rupees fifty (50.)"

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PRESENT :

R. H. MYTTON, Esq., *Officiating Judge.*

KEENOO TAUTEE AND GOVERNMENT

*versus*DAEM MOLLA (No. 1), DINONATH CHUNG (No. 2),
MUDHOO GHOSE (No. 3) AND SELAMEE SHEIKH
(No. 4).

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Case of
DAEM MOLLA
and others.

In a case of highway-robbery, certain prisoners convicted by the sessions judge, solely on evidence to recognition, acquitted, that species of proof being considered untrustworthy, when entirely unsupported.

CRIME CHARGED.—Highway-robbery attended with the murder of Pauchcowree Tautée, and the plunder of property to the value of rupees 33-1-7½.

Committing Officer, Mr. C. F. Montresor, magistrate of Nuddea.

Tried before Mr. J. C. Brown, sessions judge of Nuddea, on the 13th October 1852.

Remarks by the sessions judge.—“The *futwa* of the law officer of this court convicts each of the prisoners of the crime of highway-robbery with murder, and declares them liable to severe discretionary punishment (*akoobut shuddeed*.)

“The following facts are to be found proved in evidence. The murdered man, the prosecutor (Keenoo Tautee), the three eye-witnesses, and some others were returning from market, and when they reached a lonely spot near some trees they were suddenly waylaid by the prisoners and two or three other persons, who commenced maltreating them; and one of the foot-pads, Dinonath Chung (prisoner No. 2), has been sworn to as the one who attacked the deceased, and gave him a severe blow with a stick on his forehead, which, according to the description given by the witnesses, fractured the skull from the nose to nearly the top of the head. The deceased fell and remained insensible until his death, which occurred the following day.

“Having deprived the deceased of all power of resistance, and put all his companions to flight, these ruffians carried off the bundle he was carrying, containing new cloths and the produce of the sales he had effected that day, amounting to rupees 33-1-7½.

“The prisoners are notorious for practices similar to that of which they have now been convicted, and the prosecutor and witnesses being personally acquainted with them had no difficulty in recognising them.

“The prisoners all plead ‘*not guilty*,’ and each has endeavoured to prove an *alibi*, which they have failed to establish. All their witnesses swore to their being elsewhere on the evening of the 2nd of Assin last, which was about a month ago,

but when asked when they first came into the station for the purpose of being examined as to what they knew in the case, although that occurred only a few days ago, they could not fix on any date.

"The first prisoner says he was absent at Chagdah, distant from the place where the crime was committed, inquiring about the price of linseed. It happens that Chagdah is no mart, only a small bazar, while Kishengunge, Hauskhalee, and other places were close at hand, and the information he pretends he was in search of, would have been easier obtained at any of those *gunjes*.

"The second prisoner brought two witnesses to prove he was out fishing with them at the time the robbery was committed, but though they said he had often been with them on the same employment, they could not give any date but the 2nd of Assin.

"In a similar way the witnesses cited by Madhoo Ghose said, they had been for several days employed with him in collecting his paddy crop, and though they could not name any other day on which they were similarly engaged, yet they pertinaciously named the 2nd of Assin as the only one they could distinctly remember, but could give no reason for so doing.

"The fourth prisoner said, that on that day his landlord's servants had come to the village to collect the rents, and that he went to another village to obtain the loan of some money and did not return till late at night on 2nd Assin; but this must have been a falsehood, as it is a well-known fact that no Bengalee in this part of the country will have any money transaction in the way of lending or borrowing on a Thursday.

"All the witnesses that appeared for the prisoners held their heads down while they were being examined and appeared ashamed of the part they were taking in the proceedings.

"I agree with the law officer in thinking the crime of highway-robbery attended with murder has been clearly and fully proved against the whole four prisoners; and under the provisions of Sections III. and IV. Regulation LIII. of 1803, they are all liable to capital punishment. However, I am of opinion that the ends of justice will be answered if only the individual who dealt the fatal blow is so sentenced. He is Dinonath Chung (prisoner No. 2 of the calendar) and I can see no extenuating circumstances in his favor.

"The remaining three prisoners I strongly recommend may be sentenced to imprisonment for life in transportation beyond sea.

"The prisoners have been for some time the dread of the inhabitants where they reside, and it is to be hoped that this conviction will ensure some tranquillity in that quarter."

1852.

October 17.

Case of
DAEM MOLLA
and others.

1852.

October 30.

Case of
DAEM MOLLA
and others.

Remarks by the Nizamut Adawlut.—(Present: Mr. R. H. Mytton.)—"The proof of the offence on record is solely evidence to recognition at the time of the occurrence, which took place at night, but, it is stated, on a moonlight night. This evidence, when unsupported by any other proof whatever, is not in my opinion trustworthy. It is a general rule, and a very natural one, with robbers not to attack any one who can recognize them, at least not without well disguising themselves. The prisoners are acknowledged to have been known to the witnesses and the aggrieved almost all their lives. The attack took place near the residence of one, who is said to be the principal offender. The chowkeedar of that very village and others were attracted by the noise, and going to the spot, the prosecutor and his witnesses stated that they had been robbed, but mentioned no names.* It would have been natural for them, if they had identified any one, immediately to say, 'so and so has attacked us; one of them belongs to your village, go and seize him.'

"The prisoners are probably suspected persons, and from suspicion to declaration of recognition is but a small step with a Bengalee.

"It is not at all probable that the witnesses, who were ahead of those attacked and ran away, should have stood, as they say they did, near enough to recognize persons, even if they knew them and it were a moonlight night. The proof does not satisfy me, and I therefore acquit the prisoners."

* *Vide* deposition of Keenoo, Chowkeedar in the foudjaree court.

PRESENT :

R. H. MYTTON, Esq., *Officiating Judge.*

GOVERNMENT

versus

RAM CHAND CHUNG MONDOLE.

CRIME CHARGED.—Wilful murder of his wife, Musst. Onoopoornah.

Committing Officer, Mr. T. Tweedie, deputy magistrate of Moonsheegunge, Dacca.

Tried before Mr. H. T. Raikes, officiating commissioner, with powers of sessions judge, Dacca, on the 11th October 1852.

Remarks by the officiating commissioner.—“The prisoner has given his own account of this case in his confessions before the police and before the magistrate. In these statements he says that he had been married to the deceased about nine years, and resided with her in her father's house; that on the night in question he was with his wife and child in bed, and towards morning, she told him that she would no longer live in her father's house, but would go elsewhere, asserting that the family spoke ill of her. He remonstrated with her, and as the conversation between them proceeded, he got very angry and left the bed, and taking up a heavy block of wood (used for chopping tobacco) which was under a *mechan* in the room, struck her with it on the side of the head as she lay on the bed; she gave one scream which awoke the inmates of the house, and he then attempted to leave the place, but was stopped by his father-in-law and afterwards placed in the custody of the chowkeedar.

“The witnesses were members of the prisoner's father-in-law's family, who were at the time sleeping in the same premises, and, hearing the scream, went to the prisoner's hut, and on his coming out, discovered his wife lying on the bed senseless, with a wound on the side of the head near the right ear; she never spoke a word and died in the evening.

“The body was examined by the surgeon of Dacca, who deposed that death had been the consequence of fracture of the skull, and that the block of wood before this court, or any similar weapon, might have inflicted the injury which proved fatal to life.

“The prisoner in this court admitted having struck his wife a blow; but said he was at the time suffering from a disease which took away his senses, and that he had no recollection how it happened.

1852.

October 30.

Case of
RAM CHAND
CHUNG MON-
DOLE.

Wilful murder of a wife with a club in the heat of passion, but for a trivial cause,—sentence, transportation for life.

1852.

October 30.

Case of
RAM CHAND
CHUNG MON-
DOLE.

"The *futwa* of the law officer convicts the prisoner of culpable homicide. In this finding I do not concur, as the offence appears to me to amount to wilful murder.

"The weapon with which it was committed is a heavy piece of hard wood, about three feet long, weighing two seers and one and a half chittacks, and so thick that it could not have been wielded with one hand. This weapon, the prisoner says, he took from under a *mechan* in the room where he was, having left his bed to look for it. With this he struck his wife on the side of the head such a blow as completely fractured her skull, and then tried to escape from the house as fast as he could. Such acts in my opinion indicate a mortal and ruthless purpose, and an utter recklessness of consequences which lead me to convict the prisoner of wilful murder; but as the offence is not heightened by any particular atrocity, it seems consistent with the practice of our courts to recommend some punishment short of death. I therefore propose to sentence the prisoner to perpetual imprisonment."

Remarks by the Nizamut Adawlut.—(Present: Mr. R. H. Mytton.)—"The deadly nature of the weapon, and the mortal part of the body at which the blow was too successfully aimed, show that there was an intention to kill, and the cause of provocation was of too trivial a nature to reduce the crime to culpable homicide. The officiating commissioner with powers of sessions judge, has rightly held it to amount to wilful murder. He is under a mistake, however, in stating that the prisoner stated at the *thanna* and before the magistrate, that the deceased would not stay at her father's house; it was the contrary. The prisoner proposed that they should leave it and *she* objected; this irritated him.

"As the offence was committed in heat of blood at the time of the dispute, I consider that transportation for life will be an adequate punishment. A warrant will issue accordingly.

"The marginal note of the commissioner's letter states the charge to be wilful murder, and the *futwa* 'conviction'. This is, as shown by him in the body of the letter, incorrect."

SUMMARY CASES.

PRESENT.

J. R. COLVIN, Esq., Judge.

KUNAYE SHEIKH

versus.

KISHEN COOMAR POODAR.

THE sessions judge of Rajshahye, unable to reverse, for reasons stated, the sentence of two (2) months' imprisonment, with labor, commutable to a fine of rupees ten (10), passed by the joint magistrate upon the prisoner for assault and plunder, referred the case, under Act XXXI. of 1841, with the following report, No. 48*, dated 20th September 1852.

"The complaint (by petitioner) was lodged on the 3rd September 1851, and on the 19th the witnesses who had been summoned were examined.

"The appellant put in appearance on the 29th of June, when his witnesses (to an *alibi*.) were summoned, and on the 19th of

1852.

October 4.

Case of
KISHEN COOMAR POODAR.

The witnesses for the prosecution once examined before the attendance of the accused must invariably be summoned again, should the latter, on appearance, desire to have them produced.

* *Explanation of the Joint Magistrate in regard to the Sessions Judge's Report.*

"With reference to your letter, No. 48, of the 20thth instant, to the Sudder Court, in the case noted in the margin, I desire to explain that I have found it a common practice in the Mofussil for an accused person to evade all process of law for months and years; and when he is at last apprehended, or forced to put in his

KUNAYE SHEIKH
versus

KISHEN COOMAR POODAR, Appellant.

Sentenced for assault and plundering a house, to two (2) months' imprisonment, with labor, commutable on the payment of a fine of rupees ten (10).

appearance by the impending sale of his property, he makes some agreement with the prosecutor and his witnesses and suborns them to swear that he is not the man formerly named.

"This brings our courts into contempt, and therefore when I found that the accused person had absconded* for nine months, and that the prisoner, although denying his identity with the accused, had allowed his property to remain under attachment for more than six months, without making any attempt for its release, and only appeared after I had obtained the orders of Government for the sale of it; and when I found also, that the evidence to the *alibi* was of no value, I threw out his other plea as manifestly false, because I could have placed no confidence in the evidence of the witnesses, even if they had denied his identity.

"Where an accused person comes forward after the lapse of only a reasonable period, and satisfactorily accounts for his previous absence, I always, if he requests it, send for the witnesses to his identification.

* *Note by Sessions Judge.*—"The person above alluded to, was, I presume, punished in some other case, and the evidence was taken, I suppose, after the prisoner was summoned." But it is different in a case of this nature, and I take the liberty of reminding you that you admitted the force of this reasoning in the case of Government *versus* Ram Dhun Tah,* on which you passed orders in appeal on the 10th August last."

1852.

October 4.

Case of
KISHEN COO-
MAR POODAR.

July, on his petitioning, the case was taken up, and the joint magistrate, on the evidence of the witnesses for the prosecution,

"Sentenced for assault and plundering a house, to two (2) months' imprisonment, with labor, commutable on the payment of a fine of rupees ten (10)."

summoned before any of the prisoner's to *test the truth of the petition* or complaint, sentenced the appellant to the imprisonment noted in the margin on the 21st July last, and which will expire to-morrow.

"As neither the prosecutor's witnesses were ever confronted with the prisoner after he put in appearance, nor was he identified by them as the person who committed the assault, and as in all cases, where witnesses to a complaint are summoned and examined (as in this) before any summons is issued for the attendance of the prisoner, when the latter attends, the prosecutor and witnesses should be again summoned, to give the accused an opportunity of cross-examining them, I am of opinion the *ex parte* evidence will not sustain the conviction, and that the joint magistrate's order ought to be quashed, and the fine, in lieu of labor, paid, returned to the appellant.

"This reference is also unavoidable, from the petition of appeal having been presented long after the period allowed for appealing, and though it is alleged by the petitioner, that he gave in a petition to the jail darogah, or that the latter was told by the joint magistrate to take his petition, none has ever reached this court; and directing an inquiry at present would only lead to further delay. The case is, therefore, submitted without my giving any opinion on the merits of the case, or the evidence to the *alibi* that the petitioner at the time was at Dacca."

Resolution of the Nizamut Adawlut, No. 1408, dated the 4th October 1852.—(Present: Mr. J. R. Colvin).—"The court, having perused the papers above recorded, connected with the case of Kishen Coomar Poodar, observe that, whenever a party, summoned after the taking of evidence for a prosecution, makes, upon his appearance, in whatever manner, a request that the witnesses who were so examined before the issue of the summons, and before his attendance, should be called for, in order that they may be further examined before himself, whether as to the point of his recognition and identification, or as to any other point, it is the plain duty of a magistrate again to send for those witnesses, and to have them re-examined, in the prisoner's presence, as to any matter which he may indicate.

"In the present case; the officiating joint magistrate deliberately declined to act on a request made to him by the prisoner for the re-examination of the witnesses for the prosecution, who were, independently of the prisoner's request, indispensably

required for the purpose of identifying him. His reasons for this course of proceeding, so entirely opposed to all judicial principle or rule, are quite unsatisfactory. Witnesses, who perjure themselves by denying the identity of a defendant or prisoner, may be punished by legal means for their perjury, but all witnesses must be subjected to the fullest examination which a prisoner may desire, and no party can be punished for a crime, till his identity as the criminal has been duly established by legal evidence.

“The officiating joint magistrate, Mr. F. Beaufort, must be careful to observe the due course of law in all matters before him. Convictions, passed upon arbitrarily imperfect investigations, cannot be sustained by the court.

“The conviction and sentence on the prisoner Kishen Coomar Poodar are reversed. The prisoner, it appears from paragraph third of the sessions judge’s letter, must already have been released. If he has not been so, he will be released forthwith, as he will have already undergone imprisonment for a period of two (2) months. The fine of rupees ten (10) which has been levied from the prisoner, will be returned to him.”

1852.

October 4.

Case of
KISHEN COO-
MAR POODAR.

PRESENT :

J. R. COLVIN, Esq., *Judge*.

BESHEE PESHAGAR

versus

KUNGALEE SHAH

1852.

October 4.

Case of
KUNGALEE
SHAH.

It not being established, that the appellant at the time of making the purchase, or subsequent thereto, was aware of the sold property being stolen, his discharge was directed by the Nizamut Adawlut.

THE sessions judge of Rajshahye, unable to reverse, for reasons stated, the sentence of three (3) months' imprisonment, with labor, commutable to a fine of rupees fifteen (15), passed upon the prisoner by the joint magistrate, referred the case under Act XXXI. of 1841, with the following letter, No. 47,* of the 20th September 1852.

* *Explanation of the Joint Magistrate in regard to the Sessions Judge's Report.*

"With reference to your letter to the Sudder Court, No. 47, of the 20th instant, in the case noted in the margin, I have the honor to observe that the prisoner bought a pair of silver ornaments from a person of bad character, who resided at no great distance from him, and of whose character he was probably aware. Moreover he bought them without

BESHEE PESHAGAR

versus

KUNGALEE SHAH, Appellant.

Sentence, for having in his possession stolen property, to three (3) months' imprisonment, with labor, commutable with payment of a fine of rupees fifteen (15).

making any inquiry as to their rightful ownership, which he might have ascertained from the neighbours, if the seller had obtained them by fair means.

"The fact is, that thefts would be of less frequent occurrence, if there was more difficulty found in the disposal of the stolen property. Professional receivers make no secret of their trade, and that it is carried on openly, is, in my opinion, only a proof of their boldness. But it is not only through those men who make a living by the profits of receiving, that the thieves find an outlet for their stolen goods. Persons of good character absorb much, and thereby destroy all traces of the crime by purchasing any property brought to them for sale, without making the least inquiry as to the mode by which the seller has acquired it.

"Numbers of stolen cattle are disposed of in this way in open market, by men who are notorious thieves, because the purchaser thinks that his ignorance of the means by which they came into the hands of the seller will save him from all punishment. I maintain that such purchasers are deserving of punishment, because they are, I think, bound to make some inquiry at least as to the character of the seller. If he has come a long distance from his home to sell, that alone should originate suspicion; but if his house is near at hand, then there can be no difficulty in ascertaining his general character, and in most instances his right to the property which he offers for sale.

"When the purchaser has taken reasonable pains to ascertain whether any suspicion attached itself to the offer for sale, I hold him guiltless ;

" A theft was committed and the offender, when apprehended, pointed out the appellant, who pleaded that he had bought the lump of silver of Haroo (the thief) for rupees 2-7-0, paying him at the rate of annas 10 the *tolah* for it. This purchase was made *openly*, in the *hāt*, before several persons, and three deposed to this effect before the joint magistrate.

" As I can find neither direct nor presumptive proof, that the appellant, at the time of making the purchase, or *subsequent thereto*, was aware of the silver being stolen, I consider there has been no offence by the prisoner, and that the sentence passed on him on the 3rd August by the joint magistrate should be reversed, the prisoner discharged, and the fine, in lieu of labor, if paid, returned to him. ••

" This reference is unavoidable, as the prisoner appended two days after the period allowed for appealing. The petition sent by dāk was not admitted as a regular appeal."

Resolution of the Nizamut Adawlut, No. 1411, dated 4th October 1852.—(Present: Mr. J. R. Colvin.)—" The court, having duly considered the papers above recorded, connected with the case of Kungalee Shah, observe that the officiating joint magistrate has punished the prisoner as for a misdemeanor, under the general powers of Section XIX. Regulation IX. of 1807, for buying some stolen property, although there is no conviction of his knowing it to have been stolen, and though the purchase was made by him in open market and at a fair price, because he made no inquiry as to the means by which the seller acquired the property, and was *probably* aware of the bad character of the seller.

" The law has provided for the punishment of parties who purchase stolen property, knowing it to have been stolen. The presumptions, which establish such knowledge, must be matter of evidence in each case. But as it has not made the mere purchase of any description of property, without previous inquiry as to the means by which the party offering it for sale acquired it, a penal act, the magistrates have no power to treat

but where he has made no inquiry at all, even though he has paid a fair price for the goods, I consider him guilty of a misdemeanor, if his character be good; and, if otherwise, I consider it a strong presumption of guilty knowledge.

" The court will observe that I convicted the prisoner of a misdemeanor only, and punished him accordingly."

Note by Sessions Judge.—" What the officiating joint magistrate has above written would apply if the guilty knowledge at the time of receipt was the prisoner's offence; but the punishment was for a guilty knowledge subsequent to the purchase made by the prisoner of the silver or silver ornaments."

1852

October 4.

Case of
KUNGALEE
SHAH.

1852. such a purchase as punishable under the general and arbitrary designation of misdemeanor.
- October 4. "The officiating joint magistrate, Mr. Beaufort, must be careful hereafter not to overstep the law in the exercise of the responsible authority committed to him.
- Case of
KUNGALSH
SHAH. "The court reverse the conviction and sentence passed by the officiating joint magistrate on the 3rd of August last upon the prisoner Kungalee Shah, and direct that he be forthwith released and the fine of rupees fifteen (15) awarded against him returned to him, should it have been levied."

PRESENT :

W. B. JACKSON, Esq., Judge.

GOVERNMENT

versus

TOOFANEE (No. 2) AND DIANUT KHAN (No. 3).

CRIME CHARGED.—No. 2, perjury, in having, on the 20th January 1852, intentionally and deliberately deposed, under a solemn declaration taken instead of an oath, before the deputy magistrate of Sewan, that Bissondial Singh, thannadar of Derowly, had taken two rupees and two goats from No. 1,* and caused him (prisoner No. 1) and Mongher Chowkeedar (witness) to be beaten, and the said prisoner No. 2 and Ghasee Khan, Mongher Chowkeedar and Dianut Khan to be closely confined; and in having, on the same date, again intentionally and deliberately deposed, under the same solemn declaration taken instead of an oath, before the said deputy magistrate, that he had not gone to the thanna, and that he had made the statement at the suggestion of prisoner No. 1, such statements being contradictory of each other on a point material to the issue of the case. No. 3, perjury, in having, on the 20th January 1852, intentionally and deliberately deposed, under a solemn declaration taken instead of an oath, before the deputy magistrate of Sewan, that on Friday (2nd January) he had gone to the thanna with prisoner No. 1, and that the thannadar said he would not take one rupee but to bring two rupees and two goats, and he would enter the *gorait's* name; and in having, on the same date, again intentionally and deliberately deposed, under a solemn declaration taken instead of an oath, before the said deputy magistrate, that he had not gone on Friday (2nd January) and that he had said so from fear of Ghasee Khan (prisoner No. 1), and that what Ghasee Khan had stated regarding him was false, such statements being contradictory of each other on a point material to the issue of the case.

CRIME ESTABLISHED.—Perjury.

Committing Officer, Mr. J. F. Lynch, deputy magistrate with magisterial powers, Sewan, Sarun.

Tried before Mr. C. Garstin, sessions judge of Sarun, on the 20th April 1852.

Remarks by the sessions judge.—“The facts of this case are shortly as follows:—The prisoner Ghasee Khan brought a charge in the deputy magistrate's court that the thannadar of Derowly, after having taken from him two rupees and two goats

1852.

November 1.

Case of
TOOFANEE
and another.

The conviction and sentence of the prisoners for perjury, affirmed.

* Acquitted by the lower court.

1852.

November 1.

Case of
TOOFANEE
and another.

as a bribe (or *nuzzur*),* had beaten and confined both himself and some other persons who had gone to the thanna with him to fill up the appointment of *gorait* which had become vacant. When the case was taken up, and the witnesses, &c., were examined, though they all in the first instance corroborated this story, still, when cross-examined by the deputy himself, one of them (Mongher Chowkeedar) admitted that it was false, and that the whole thing had been arranged and settled at the zemindar's house. Upon this both the prisoners (Toofanee and Dianut) were also further questioned, when they both in like manner admitted that they had spoken falsely, Toofanee saying that he had done so at the instigation of Ghasee, and Dianut from fear of him. On their trial they all plead '*not guilty*,' Ghasee Khan saying that the complaint he made was well-founded and true, and that the other prisoners have been bought over to deny it. Toofanee says his reply has not been properly taken down, and that he said he *had gone* with Ghasee, whilst he is reported to have said that he *had not gone*. Dianut says that he went only on the 'Friday and heard from Ghasee that the rupees and goats had been taken, but none of the prisoners calls any witnesses, and it is clearly shown that both Toofanee and Dianut admitted to the magistrate that they had given false statements (on oath), the one at the instigation and the other from fear of Ghasee Khan. There is, however, no proof that Ghasee Khan either perjured himself or suborned the others to do so, and he has from the first been consistent in the story he has told of the affair. The moulvee acquits Ghasee Khan and convicts the other two prisoners; and as under all the facts of the case I cannot but agree in this finding, I have acquitted Ghasee and sentenced the other prisoners as noted."

Sentence passed by the lower court.—Each, three (3) years' imprisonment, with labour in irons.

Remarks by the Nizamut Adawlut.—(Present: Mr. W. B. Jackson.—"I see no reason to interfere with the sentence passed on the prisoners Toofanee and Dianut."

PRESENT :

A. J. M. MILLS, Esq., *Officiating Judge.*

SHEIKH ENAIT AND GOVERNMENT

versus

SHEIKH ASHAMOODDEE (No. 1), SHEIKH ALLUM (No. 2), SHEIKH AFAN (No. 3) AND SHEIKH PEAR MAHOMED (No. 4).

CRIME CHARGED.—1st count, wilful murder of Moochoo Sheikh; and 2nd count, accessories, before and after the fact, to the above crime.

CRIME ESTABLISHED.—Nos. 1 to 4, culpable homicide.

Committing Officer, Mr. A. Abercrombie, assistant, exercising the powers of joint magistrate, Mymensing.

Tried before Mr. R. E. Cunliffe, sessions judge of Mymensing, on the 28th September 1852.

Remarks by the sessions judge.—“ From the evidence of the eye-witnesses and the confessions of the prisoners in the Mofussil and in the foudjaree, it appears that about midnight the deceased was caught in the room in which No. 1 and his wife slept. The prisoners state that he came to steal, but from the character of No. 1's wife, and his being a near neighbour, the presumption is that he had gone to visit her; that the deceased was seen to enter by No. 3 and seized by him, and on his calling out the other prisoners came, and all beat him brutally with bamboos, and by their own account breaking one leg and one arm; after which they tied his hands together and also his feet together, and putting a bamboo through them, carried him to a distance of one *ghurrie* and kept him in a plain, where he was found next morning, alive, but unable to speak. Information was immediately given to the darogah, but before he could arrive, at 12 o'clock, the deceased was dead. The evidence of the civil surgeon shows that the body was too much decomposed to state the immediate cause of death; but the injuries he had received, which must have been inflicted before death, were sufficient to have caused it. They consisted of fracture of the skull and fractures of both arms and both legs. In the defence before this court, prisoner No. 1 said deceased had entered as a thief, and that he had given him one blow with a small bamboo, and that he and Nos. 2 and 3 carried deceased to the place where he was found; and named witnesses to character, and that the mats of his house had been cut, who gave him a good character, and one, a burkundauz, said the mat appeared to have been cut and lately re-tied. No. 2 said, he went to No. 1's house on hearing the noise and assisted in taking the deceased away, but

1852.

November 1.

Case of
SHEIKH
ASHAMOOD-
DEE and
others.

The prisoners, after seizure of him, without resistance, having maltreated the deceased, caught on the premises of one of them, so that he died, were convicted, by the sessions judge and by the Nizamut Adawlut in appeal, of culpable homicide.

1852.

November 1.

Case of
ASHAMOOD-
DKE and
others.

denied beating him; and named witnesses to character, who deposed in his favor. No. 3 said he saw the deceased enter the house and attempting to seize him the prisoners struck at him with a knife, on which he struck him with a *lattee*, when the other prisoners also came and beat him; and named witnesses to prove deceased was a thief, and that he had made a hole into the house, which they knew nothing of; but one of them said deceased was considered to be a thief. No. 4 said he went to No. 1's house on hearing the noise and found deceased lying on the ground and the other prisoners standing by, but denied striking the deceased, and declined taking the evidence of his witnesses. The *futwa* of the law officer convicts all the prisoners of culpable homicide, on a violent presumption, in which I concurd."

Sentence passed by the lower court.—Nos. 1 to 4, each, seven (7) years' imprisonment, with labor in irons.

Remarks by the Nizamut Adawlut.—(Present: Mr. A. J. M. Mills.)—"The prisoners have appealed. They admit their guilt, but plead in justification that the deceased was seized in the act of burglariously entering the house of prisoner No. 1, and that they beat him in self-defence. But this plea is not proved. The strong presumption arising from the circumstances of the case is, that the deceased's purpose in going at night to the house of prisoner No. 1 was in pursuit of his intrigue with the wife of prisoner No. 1 and not to thief. He was caught by the prisoner No. 3, who stated on the trial that the deceased struck at him with a knife, on which he struck him with a club, and called the other prisoners to his assistance, but the prisoner did not urge this extenuating plea either in his *foujdaree* or *Mofussil* confession, and it cannot, therefore, be now admitted. It is clear, indeed, from the confessions of the prisoners, that the deceased was seized without resistance by the prisoner No. 3; that the other prisoners came at his bidding, and they all brutally assaulted the deceased, fracturing his skull, and breaking his two legs, and two arms, and that they then slung him on a bamboo, and carried him some distance, where they left him, and where he was found almost lifeless the next morning. I concur in the conviction, and sentence, which, with reference to the circumstances of the case, is not too severe. I reject the appeal."

PRESENT :

W. B. JACKSON, Esq., Judge.

RAMDHUN SINGH

versus •

SARDHA (No. 16) AND PERSHAD (No. 17).

CRIME CHARGED.—1st count, stealing thirteen heads of cattle valued at rupees 130; 2nd count, having in possession certain cattle, knowing them to have been stolen, valued at rupees 80; and 3rd count, privy after the fact.

CRIME ESTABLISHED.—Having in possession certain cattle knowing them to be stolen.

Committing Officer, Mr. F. A. Glover, officiating joint magistrate of Chumparun, Sarun.

Tried before, Mr. C. Garstin, sessions judge of Sarun, on the 2nd August 1852.

Remarks by the sessions judge.—“ This case has been committed to the sessions on account of the second prisoner having already been sent up on another charge.

“ It appears that in the first instance seventeen heads of cattle were stolen from the prosecutor, but that four of them got away and returned, and that parties being sent out to look for those still missing, fell in with the two prisoners, who agreed to restore them (a very common thing in this part of the world) upon a donation of rupees 2 a head being paid to them. This was accordingly done, and rupees 26 being paid down, an agreement was made that if the parties would be at a certain place (duly pointed out) on a Sunday night, the cattle would be brought there by the prisoners; and the appointment being duly kept, the two prisoners and three other persons came to the place with eight head only, when the prisoner Sardha was seized with the cattle, but all the other persons escaped, though Pershad was subsequently pointed out and captured. Both prisoners deny their guilt, but neither of them assign any good reason for their being accused in this way. Pershad says that he knows nothing about it, and Sardha says that the prosecutor called him to his master's, under the pretence of getting him employed in sowing some rice, when he was suddenly seized and brought in upon this charge. He calls four witnesses, who all depose to his being called away as stated, but none of them can assign any reason for his being falsely implicated; and the thing is fully and clearly proved by the evidence brought for the prosecution, added to which both the prisoners are of indifferent character. I must say that I think the second count of the charge

1852.

November 1.
Case of
SARDHA and
another.

The appeal
of the prison-
ers, convicted
of knowingly
having stolen
cattle in their
possession, re-
jected.

1852.

November 1.
Case of
SARDHA and
another.

established; and as the moulvee also convicts them both, they have, in concurrence with the *futwa*, been sentenced as noted."

Sentence passed by the lower court.—Each three (3) years' imprisonment, with labor in irons.

Remarks by the Nizamut Adawlut.—(Present: Mr. W. B. Jackson).—"I see no reason to interfere with the sentence passed on Sardha and Pershad, prisoners."

PRESENT :

W. B. JACKSON, Esq., Judge.

RAMDEAL

versus

RUGHOOBUR (No. 2), GOPAL (No. 3), PERSHAD (No. 4), RUNYE (No. 5) AND NUNIHUK (No. 6).

1852.

November 1.
Case of
RUGHOOBUR
and others.

Conviction
and sentence
affirmed, ap-
peal rejected.

CRIME CHARGED.—1st count, Nos. 2, 3, 4 and 5, burglary with theft of property valued at Company's rupees 113-7-0; 2nd count, Nos. 2, 3 and 6, having in possession part of the above property knowing it to be stolen; 3rd count, purchasing part of the above property knowing it to be stolen; and 4th count, No. 4, privy after the fact of the above burglary and theft.

CRIME ESTABLISHED.—Nos. 3 and 5, burglary and theft, Nos. 2 and 6, having in possession property knowing it to be stolen, and No. 4, privy after the fact to burglary and theft.

Committing Officer, Mr. F. A. Glover, officiating joint magistrate of Chumparun, Sarun.

Tried before Mr. C. Garstin, sessions judge of Sarun, on the 2nd August 1852.

Remarks by the sessions judge.—"In this case the prosecutor, after having first of all tried to procure the restitution of the property of which he had been robbed from some of the robbers whom he had traced from a *sind maree* left at his house, applied to the police to have search made in their houses; in consequence of which the darogah proceeded with him, and on searching the prisoner Rughoobur's (No. 2's), house found in it some *thalees*, &c., which had been stolen from the prosecutor. They then proceeded (Rughoobur being taken with them) to search some other houses, when they were beset by a number of men, who both rescued him (Rughoobur) and beat off the police, after having in the tumult set fire to the thatch of a house belonging to the prisoner Pershad, (No. 4)."

"This being duly reported to the magistrate, that officer deputed another darogah to go and assist in the inquiry, and

* See case of Sonophool and others, 6th November 1852, p. 692.

1852.

November 1.

Case of
Rughoobur
and others.

sent with him the prosecutor and also Pershad, who had engaged to point out the property; and by his advice the party first of all searched the house of the prisoner Gopal (No. 3), where they found a portion of the stolen articles (some silver ornaments), and got hold of his brother Rughonee (No. 10), who however said that he had quite given up stealing, but allowed that the things might have been placed there by Gopal (No. 3); soon after Gopal was himself captured, and then confessed that he had been engaged in the theft, and that Pershad (No. 4), Rughoobur (No. 2) and Runye (No. 5), had been his companions in it; and Runye also when taken, spoke to the same effect to the police, though he recanted this confession to the magistrate. Gopal had also admitted in his confession that a portion of the plunder (a pair of *huslees*) had been sold by him through Poorun (No. 11) to Nunhuk, and the latter stated that he had again parted with them to Lutchmun, and he also admitted having taken them, but said that he did not know them to be stolen, and had sold one to a sonar (unknown), and gave up the other. I should observe here that Nunhuk (No. 6) lives in one compound with his two brothers, Toolsee and Sheodeen, and in the houses of the latter a *nuth* and *thalee* were found, which also the prosecutor declared to be his, but he has failed in proving this; and indeed, with the exception of Nunhuk, the fact of being in possession of the property knowing it to be stolen, has not been brought home to either Poorun, Lutchmun, Toolsee, or Sheodeen; neither has it been proved that Rughonee (No. 10) had anything to do with the robbery. The whole of these persons have, therefore, been acquitted and released; whilst all the others have been convicted. Of all the prisoners tried in this case, Gopal alone admits his guilt, but it has been proved that Runye (No. 5) also when first taken made a confession and spoke of the same parties as Gopal, as engaged in the affair. They have both, therefore, in concurrence with the *futwa*, been convicted upon the first count, Rughoobur on that of being in possession of the stolen property, Pershad (who pointed out where portions of it were hidden) of pivity after the fact, and Nunhuk also of having it in his possession; and they have each of them been sentenced upon the different counts established against them as noted."

Sentence passed by the lower court.—No. 2, three (3) years' imprisonment, with labor in irons. Nos. 3 and 5, each, four (4) years' imprisonment, with labor and irons. No. 4, three (3) years' imprisonment, and a fine of rupees fifty (50), or labor, and No. 6, two (2) years' imprisonment, with labor and irons.

Remarks by the Nizamut Adawlut.—(Present: Mr. W. B. Jackson.)—"I see no reason to interfere with the sentence passed on the prisoners Rughoobur, Gopal, Pershad, Runye and Nunhuk."

PRESENT :

A. J. M. MILLS, Esq., *Officiating Judge.*

GOVERNMENT

versus

MOTEE SINGH BURKUNDAUZ.

1852.

November 2.

Case of
MOTEE
SINGH BUR-
KUNDAUZ.

The prison-
er, while un-
der the influ-
ence of *ganja*,
having mort-
ally wounded
the deceased,
a fellow bur-
kundaüz,
whose death
ensued a few
days after-
wards, was
sentenced to
transporta-
tion for life.

CRIME CHARGED.—Wilful murder of Eusuf Aleë, burkun-
daüz, who was wounded by the prisoner on the 17th July 1852,
corresponding with 3rd Sawun 1259, and died from its effect
on the 31st July 1852, corresponding with 17th Sawun 1259.

Committing Officer, Mr. C. F. Carnac, officiating magistrate
of Moershedabad.

Tried before Mr. D. I. Money, sessions judge of Moorsheda-
bad, on the 27th September 1852.

Remarks by the sessions judge.—“The prisoner pleaded
‘not guilty.’

“The particulars of the case are as follows :—

“In this case the Government was prosecutor, and there was
only one witness to the fact, named Gomanee Sheikh, who depos-
ed that he was a convict of the Nuddeä jail, in banishment, and
was on his way back from Dinagapore to Nuddeä; that he
slept in the thanna of Dewan Surye on the night of the 17th
July 1852. The prisoner Motee Singh was a burkundaüz
attached to the thanna. About 3 A. M., the prisoner called out
to the witness that he (prisoner) had been bitten by a snake.
The witness saw a snake pass by his bed near to the *charpaee*
of the prisoner, who cut it into pieces with a sword, after which,
at his request, the witness prepared obacco for the prisoner to
smoke and returned to bed. Before he was asleep he heard
Eusuf Aleë, burkundaüz, the deceased, give an alarm that he
was murdered. He got up and saw the prisoner strike the
deceased with a sword. He seized the prisoner, pushed him
down, and snatched the sword from him, and delivering it to
Ram Singh and other burkundaüzes, put him in the stocks
under a guard. Saw a wound on the deceased’s head, about
eight fingers in length and two in breadth, and the right elbow
was separated from the joint and blood streaming from it.

“Ram Singh, Kenoo Sheikh and Anardee Sheikh swore to
their having seen the deceased Eusuf Aleë on guard, and
Gomanee, the convict, then at the thanna, seize the prisoner with
the sword which he snatched from him. They describe the
wounds upon the deceased, who at the time was in a state of
insensibility.

“The deceased was wounded by the prisoner on the 17th
July 1852, and died from its effect on the 31st, having been
confined to bed during the interval. The moonshee of the

thanna held the investigation and took down the deceased's statement, in which he declared that the prisoner murdered him without cause. There was no quarrel between the prisoner and the deceased. The snake which had been killed was found in the morning. Kullen Sheikh proved the *sooruthal*.

"The voluntary confession of the prisoner, to the effect that he had struck the deceased two blows, was proved by the attesting witnesses.

"The civil surgeon, in his deposition before the magistrate, stated that Eusuf Alec, the deceased, was suffering from a wound on the right arm, apparently inflicted with a sharp-edged instrument, penetrating into the elbow-joint and separating a portion of the bone. There was also a very severe wound on the side of the head, separating the left ear from the skull, and partly cutting the skull itself. The deceased died on the 31st July, chiefly from the effects of the wound on the head, which was very deep.

"The prisoner in his defence stated that he had not wounded Eusuf Alec, burkundauz, the deceased, and gave the following most improbable account; that he and two others were deputed by the darogah to the house of Rao Ram Sunker, but on attempting to apprehend Bisoo Roy and Gungapersaud Roy, they threatened to cut his head off and submit to any expense it would cost them, and that upon this the prisoner ran away to the darogah of thanna Khumra, who sent him back to his own thanna. About three *pukurs* in the night, Eusuf Alec, the deceased, was on guard, when about twenty or twenty-five men, on the part of Rao Ram Sunker, came to the thanna, upon which the prisoner hid himself close to the deceased, and he had his sword there, which Ram Singh, one of Rao Ram Sunker's men, had besmeared with blood. The prisoner could not tell by whom Eusuf was wounded. He denied having made any confession before the darogah.

"The *futwa* of the law officer convicted the prisoner of wilful murder and declared him liable to *akoobut*.

"This is a singular case, and one in which there appears to have been no provocation and no *malice prepense*. The assault was a sudden and violent one, with a deadly weapon, and death ensued from the wounds which were inflicted. There is no proof that the prisoner was insane* at the time, or had been insane previously, but he had been in the habit of taking *ganja*, and was, I believe, under the influence of this pernicious drug at the time, and the sight and effort of killing the snake may have added to the excitement. Though agreeing with the *futwa*, I think, under the circumstances, justice would be satisfied with

1852.

November 2.

Case of
MOTEE
SINGH BUR-
KUNDAUZ.

* Dr. Kean, after examination, reported him to be sane.

1852.

November 2.

Case of
MOTEE
SINGH BUR-
KUNDAUZ.

a sentence of twenty (20) years' imprisonment, in banishment, with labor and irons, which I would recommend."

Remarks by the Nizamut Adawlut,—(Present: Mr. A. J. M. Mills.)—"The proof against the prisoner is complete and I convict him of the offence charged. There is no discoverable motive for the murder. The deceased in his dying declaration stated that no ill-will existed between them, and no provocation appears to have been given. There is no proof of insanity, but it is in evidence that the prisoner was addicted to smoking *ganja*, and the witness Goomanee deposes to having prepared a *chillum* of tobacco for him shortly before the murder was committed, which occurred about 3 A. M. Whether there was *ganja* or any other stupefying drug in the tobacco is not known, but the prisoner smoked and reclined on his cot; he then observed a snake and hacked it to pieces and again laid down. Shortly afterwards he sprung from his cot, and attacked the deceased with his sword. That the prisoner was under the influence of *ganja* there can be little doubt, and it is very likely, as suggested by the sessions judge, that the sight and killing of the snake added to the excitement produced by the *ganja*. In the absence of any ascertainable motive for the act, I can only regard it as committed in the course of a temporary fit of insanity, arising from excessive smoking of *ganja*; and not deeming capital punishment to be called for in such a case, I sentence the prisoner to imprisonment for life, in transportation. The circumstances of the case do not, in my opinion, warrant a less measure of punishment."

PRESENT :

A. J. M. MILLS, Esq., *Officiating Judge.*

GOVERNMENT AND MUSST. SOOBASEE

versus,

UTTAM MAHTO.

CRIME CHARGED.—Wounding with intent to murder Musst. Soobasee, prosecutrix, on the 15th July 1852, or 1st Sawun 1259 B. S.

CRIME ESTABLISHED.—Wounding with intent to murder.

Committing Officer, Mr. G. C. S. Chapman, deputy magistrate of Deoghur, Beerbhoom.

Tried before Mr. R. B. Garrett, officiating sessions judge of Beerbhoom, on the 15th September 1852.

Remarks by the officiating sessions judge.—“On the 1st Sawun last, or 15th July 1852, Musst. Soobasee, the wife of the prisoner, was lying asleep in her house, when the prisoner entered and with a heavy native hatchet inflicted four wounds upon her, one on the left shoulder, a very dangerous one on the bend of the neck, a slight cut just under the left ear, and another on her hand. It is quite marvellous, considering the weight and power of the instrument, that the wounds were not much more serious or instantly fatal. The prisoner made no attempt to escape, but in walking away from his house he happened to meet Alloo Mahto (witness No. 7), to whom he mentioned what had happened. On the arrival of the village chowkeedars, witnesses Nos. 1 and 2, he acknowledged his guilt, and complained that his wife, in spite of his expostulations, persisted in keeping up an illicit intercourse with Horee Pandey. He repeated the same story to the darogah and deputy magistrate on the following day; but he subsequently seems to have taken the resolution to plead insanity, which is the defence he set up on appearing in this court, denying the misconduct of his wife, and citing Horee Pandey to give evidence on his behalf. This plea was sworn to by several witnesses, who declare that the prisoner was in an unsound state of mind for ten or fifteen days previous to the occurrence; but their evidence was unsatisfactory, and indicative of a strong bias in his favor; in some instances it overshot the mark and tended to prove the contrary of what was tendered.

“To remove all doubt, however, I summoned other witnesses to the fact of the prisoner's state, and in the meantime directed the civil assistant surgeon to observe him narrowly in the jail. After a fortnight's interval these witnesses have arrived; and their and the assistant surgeon's evidence renders it perfectly

1852.

November 4.

Case of
UTTAM MAHTO.

The prisoner's plea of insanity disallowed. Sentence passed upon him by the sessions judge, for wounding with intent to murder, considered too lenient.

1852.

November 4.

Case of
UTTAM MAH-
TO.

clear that the prisoner's mind was not at the time of the occurrence, and is not now, affected in any degree whatever.

"The *futwa* of the law officer finds the prisoner guilty of wounding with intent to murder his wife Musst. Soobasee.

"I quite agree in this verdict. I have no hesitation in rejecting the plea of insanity, which was evidently an after-thought, and has been very clumsily supported by his family and friends. His first story was clearly the true one. He no doubt believed in the misconduct of his wife, and in her intrigue with Horee Pandey, which exasperated him and drove him to commit the deed with which he stands charged. The murderous intent is amply proved by the nature of the weapon used.

"Acting on the supposition as to the motive above stated, I sentenced the prisoner to seven (7) years' imprisonment, with labor in irons."

Remarks by the Nizamut Adawlut.—(Present: Mr. A. J. M. Mills).—"The prisoner has appealed. He reiterates in his appeal the plea of insanity; it is not proved, and I agree with the sessions judge in rejecting it. I concur in the conviction of the prisoner of the offence charged, and confirm the sentence passed on him, but the case called for, I think, a much severer sentence."

PRESENT:

A. J. M. MILLS, Esq., *Officiating Judge.*

FAGO SHEIKH

versus

NUND LOLL SINGH.

1852.

November 4.

Case of
NUND LOLL
SINGH.

Conviction and sentence passed upon the prisoner upheld, his plea of *alibi* being disproved. Responsibility of the *instigator* and *striker* of a blow defined.

CRIME CHARGED.—1st count, accomplice in the wilful murder of Rooplall, son of the prosecutor; and 2nd count, having ordered the commission of the said murder.

CRIME ESTABLISHED.—Accessoryship before the fact. Committing Officer, Mr. C. F. Carnac, officiating magistrate of Moorshehabad.

Tried before Mr. D. I. Money, sessions judge of Moorshehabad, on the 22nd July 1852.

Remarks by the sessions judge.—"On the 25th May last, Dhooroop Singh was tending his cows opposite the prosecutor's house. The cows ate up some young bamboos belonging to the prosecutor, who abused him for it; upon which Dhooroop Singh went to Jowahur's brother and informed him of it; when the prisoners Aman Singh and Nund Loll came to the spot, and Nund Loll called out to Aman Singh to beat the prosecutor. Aman Singh attacked Rooplall (deceased), the prosecutor's son, and struck him on the head with a *lattee*; which brought him

to the ground, and made him insensible. The prosecutor coming to his help was also struck by Aman Singh two blows on the head with the same *lattee*. The deceased was severely wounded, never spoke after, and died the following day at 12 p. m. The civil surgeon stated in his deposition that fracture of the skull was the cause of his death, and must have been produced by a heavy and blunt instrument. The witnesses for the defence stated nothing in exculpation of the prisoners. The *fatwa* of the law officer convicted the prisoner Aman Singh of culpable homicide of the deceased, and Nund Loll of taking an active part in the assault which ended in the culpable homicide of the deceased. Concurring in the finding, I sentenced the prisoners as stated in the proper column. There was no difficulty with reference to the extent of the guilt of the prisoner Aman Singh, and therefore no difficulty in sentencing him to such punishment as in the opinion of the sessions court, the perpetration of the crime deserved; but in the case of the other prisoner, Nund Loll, it was difficult, from the facts and the evidence, to fix the degree of criminality. He gave the order to beat, 'mar! mar!' and there is nothing to prove that it was his wish that the deceased should be beaten to the endangering of his life, or that his revenge, under the provocation excited, sought for more satisfaction than a severe corporal chastisement. It is true he was the instigator, and the death of the deceased was caused by a blow, which, but for the instigation, might not have been given, and he may therefore be considered as a greater offender than the person who deals the blow in obedience to the order; but I do not think this would be a just view to take in all cases. The order may be often *transgressed*, where the intention may have been simply to beat. Life may be recklessly on a sudden sacrificed by the manner in which the order is carried out. A blow may be struck on the head, as in this instance, with a heavy dangerous weapon, which would, in all human probability, cause death; and in such case, the crime extending so much further than the original intention or expression of intention, I think the man who gives the blow more criminal than the man who gives the order, if the degree of guilt is weighed and compared impartially in the scales of justice. Should a strict rule be laid down for the infliction of an equal punishment on both, this opinion would be an exception to the rule; but having gone most carefully through the case, and considering that the prisoner Nund Loll should have the benefit of the doubt to the extent of his criminality, I sentenced him to a less severe punishment than the prisoner Aman Singh."

Sentence passed by the lower court.—Four (4) years' imprisonment, without irons, and a fine of rupees fifty (50) or labor.

Remarks by the Nizamut Adawlut.—(Present: Mr. A. J. M. Mills.)—"The prisoner Nund Loll Singh has appealed, urging

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Case of
NUND LOLL
SINGH.

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Case of
NUND LOLL
SINGH.

the plea of *alibi*; but out of four witnesses cited by him to prove it, one only deposes to seeing the prisoner in his village on the day of assault, and his evidence is contradictory and unworthy of credit. The prosecutor's statement that the prisoner instigated the assault on the deceased is supported by the evidence of four witnesses, and I see no reason whatever to doubt their testimony; it is clear, and has been throughout the proceedings consistent.

"The court in the English Department recorded the following remarks on that part of the sessions judge's judgment which referred to the relative degree of criminality of the instigator, and the striker; 'much must depend upon the circumstances of the case. In the present instance there was, however, apparently only the use of such a weapon as Aman Singh had at the time in his hand, and as the other must have expected him to use when he gave the order for striking. There was no continued or extraordinary violence beyond what was to be expected as the natural result of such an order, and therefore Nund Loll was fully responsible.' This view of the case is fully borne out by the record, and I reject the appeal, and confirm the conviction and sentence."

PRESENT :

A. J. M. MILLS, Esq., *Officiating Judge.*

GOVERNMENT AND CHIDAM MANJEE

versus

BHAIRUB DOSS MANJEE.

1852.

November 4.

Case of
BHAIRUB
DOSS MANJEE.

The prisoner, from motives of revenge, attempted to murder the party (a female), for wounding whom with that intent he was prosecuted. Sentence, transportation for life.

CRIME CHARGED.—Wounding Musst. Bhobanee with intent to murder her.

Committing Officer, Mr. W. M. Beaufort, magistrate of Backergunge.

Tried before Mr. A. S. Annand, officiating sessions judge of Backergunge, on the 5th October 1852.

Remarks by the officiating sessions judge.—"I have referred this case to the Sudder Court, because I think the attempt to commit murder so determined, premeditated, and unprovoked, as to merit a much more severe punishment than I am authorized to award under Regulation XII. of 1829.

"It appears from the evidence of Musst. Bhobanee that the prisoner Bhairub Doss is a near neighbour of her's, and that one day in Cheyt last, she went with a *kulsee* to bring water from the *khal*, when having filled it, and finding it difficult to lift, the prisoner, who was standing by, offered to assist her, and expressed his desire to have criminal connexion with her, and when repulsed threatened to be revenged. In Assar last, her

husband went to a relation's house at Kataltolee, and was absent on the night of the occurrence when she was sleeping in the northern house of the *baree* with her sister-in-law, Musst. Sona, and her father-in-law, a blind and deaf old man, and two other female relations were sleeping in one of the other houses. About 11 o'clock she heard a noise at the door, when she and Sona got up, lit a lamp, and called to the other women; when one named Bishnee came, and seeing the door of the verandah closed, told her there was nothing to fear; deponent then opened the door of the house, and putting her foot into the verandah, was instantly seized by the prisoner, who was lying hid there. She cried out murder, on which Bishnee came up and opened the verandah door, when prisoner struck her repeatedly on the head with a *dao*, and she fell senseless. On recovery she found that she had five severe wounds, one under the right eye, one on the right cheek, two on the right side of the neck, and one on the windpipe. The prisoner threw down his *dao* and ran away, and it was picked up by Musst. Sona, covered with blood. The *dao*, which is produced in court and identified as the property of the prisoner, is a very heavy one and extremely sharp.

"The prisoner confessed the crime with which he was charged both in the Mofussil and before the magistrate. He said that he had had an intimacy for the last five years with Bhobanee, which had been broken off about two months since; that wishing to renew it on the night of the occurrence, he got up about 11 o'clock, and taking a *dao* in his hand went to her house, and got into the verandah, when Bhobanee, hearing a noise outside, lit a lamp and seeing him through a crevice in the *jhamp*, began to abuse him; that shortly afterwards she called to two women in one of the other houses, who came, and she then opened her door and came out, when, being angry with her on account of the abuse she had given him, he seized her by the hair and struck her several blows with the *dao*, with the intention of killing her, and then, throwing it away, ran off.

"The evidence of the witnesses corroborates the statement of Musst. Bhobanee, and the confession of the prisoner, save that there is nothing to show that any criminal intimacy had previously existed between them. The wounds, which had hardly healed when the unfortunate woman appeared before me, were of a frightful nature. The assistant surgeon deposes that one was five inches long, and extended from the right ear to the angle of the nose; another four inches long, which divided the muscles and extended across the right cheek; another three inches long, which divided the integuments on the right side of the neck; and another on the right shoulder, which penetrated through the muscles. That he should imagine, from the nature of the

1852.

November 4.

Case of
BHAIKUB
DOSS MANJEM.

1852.

November 4.

Case of
BHAIKUB
Doss MANJEE.

wounds, that there had been an intention to destroy life, and he attributes to chance the escape of the main artery, the cutting of which would, of course, have caused almost instant death.

"A more atrocious case it is difficult to imagine. This ruffian went at night, armed with a *dāo*, to the house of his victim, when he knew that all the males of the family, save a helpless old man, were absent, determined, I believe, to gratify his desires upon Bhobanee, or kill her if she repulsed him, which it seems probable that he anticipated. She did so: the result has been shown; and it is owing to chance alone that she was not murdered. The jury found the prisoner guilty of wounding Bhobanee with intent to murder her; and concurring in that verdict, I recommend that Bhairub Doss should be sentenced to imprisonment for life."

Remarks by the Nizamut Adawlut.—(Present: Mr. A. J. M. Mills.)—"The crime, with which the prisoner is charged, has been fully proved. It is a very atrocious case; Bhobanee was hacked with six severe wounds, and it is impossible that the prisoner can be considered as actuated by anything short of a murderous intention. Indeed, he admits in his confessions, that he struck Bhobanee with the *dāo* with the intention to kill her, and he did all that in him lay to effect it. I concur with the sessions judge in the conviction of the prisoner, and sentence him, as proposed by that officer, to imprisonment for life, in transportation."

PRESENT :

SIR R. BARLOW, BART., *Judge.*

NUFAREY BEWA

versus

DANISH DHOONEA.

CRIME CHARGED.—1st count, dacoity, attended with torture, in the house of the prosecutrix, from which property to the value of rupees 174 was plundered; 2nd count, privy to the aforesaid crime before and after the fact.

CRIME ESTABLISHED.—Dacoity with torture.

Committing Officer, Mr. C. F. Cagnac, officiating magistrate of Moorshedabad.

Tried before Mr. D. I. Money, sessions judge of Moorshedabad, on the 22nd July 1852.

Remarks by the sessions judge.—“On the night of the 8th Bysakh last, the prosecutrix was sleeping in her house, when about 11 P. M., a band of twenty-five or thirty dacoits attacked the house, seized her brother, and on the prosecutrix's attempting to escape seized her also and burnt her, plundering property to the value of rupees 174, and went away. The prosecutrix recognized the prisoner on the night of the dacoity. Rajdhur Mundul and Bhaugbut, who knew him before, also recognized him during the perpetration of the dacoity; and while they were burning the prosecutrix, on whose person a scar from burning was visible. The prisoner confessed his guilt in the Mofussil and before the magistrate, and his confessions were proved by the attesting witnesses and appear to have been given voluntarily. I convicted and sentenced the prisoner as stated.”

Sentence passed by the lower court.—Eight (8) years' imprisonment, with labor and irons, in banishment, and a fine of rupees 174 as a compensation awarded to the prosecutrix, the amount plundered, under Act XVI. of 1850.

Remarks by the Nizamut Adawlut.—(Present: Sir R. Barlow Bart.)—“The prisoner confesses to have heard the consultation which took place previous to the dacoity. He was charged by the prosecutrix as the person who burnt her in several places with a torch; he was recognized by Bhaugbut, the brother of prosecutrix, who was also assaulted, and by other witnesses. His Mofussil and foudjaree confessions are duly verified. The prisoner's defence is founded on good character. His witnesses say merely that he was never before apprehended. In his appeal the prisoner refers to a trifling dispute with the prosecutrix, but he has adduced no evidence on the subject. I see no ground for interference. The sentence is too lenient under the circumstances of aggravation which attended the dacoity.”

1852.

November 4.

Case of
DANISH
DHOONEA.

Conviction of dacoity upheld, but sentence passed by the sessions judge, considered by the Nizamut Adawlut as too lenient.

PRESENT:

SIR R. BARLOW, BART.,
AND
W. B. JACKSON, ESQ., } *Judges.*

R. H. MYTTON, ESQ., *Officiating Judge.*

GOVERNMENT

versus

1ST PARTY.—KEFAYUTOOLLAH (No. 3), MONEEROO-DEEN, ALIAS MOOLYE (No. 4) AND UKBUROOLLAH (Nos 5).

2ND PARTY.—KABIL MULLIK (No. 6), ZAHEER MULLIK (No. 7), NAYAN (No. 8) AND ROOPAYE (No. 9).

1852.

November 5.

Case of
KEFAYUTOOL-
LAH and
others.

Question of
what consti-
tutes affray
considered.
One party
convicted of
assault and
wounding,
and sentenced
to six months'
imprisonment,
and fine of
fifty rupees,
commutable
to labor.
Their offence
not consider-
ed to be ag-
gravated by
two of their
own party be-
ing killed in
consequence
of their ag-
gression.

A party kill-
ing a man
with a spear,
who had seiz-
ed his wife
violently, and
was dragging
her away,
found guilty
of culpable
homicide.

CRIME CHARGED.—1st count, affray attended with the wilful murder of Kitaboodeen and Manik, and the wounding of Kabil and Zaheer Mullik; 2nd count, affray attended with the culpable homicide of Kitaboodeen and Manik, and the wounding of Kabil and Zaheer Mullik.

Committing Officer, Mr. W. M. Beaufort, magistrate of Backergunge.

Tried before Mr. A. S. Annand, officiating sessions judge of Backergunge, on the 11th September 1852.

Remarks by the officiating sessions judge.—“ From the evidence of the witnesses it appears that on the 19th Bysakh last, one Abbas, the brother of the prisoner Nayan (No. 8), married the widow of one Barh Ulla, the deceased brother of the prisoner Kefayutoollah (No. 3), at which the prisoner Moneeroodeen (No. 4) and the prisoner Ukburoollah (No. 5), who wished to have the woman himself, being displeased, went with Kefayutoollah (No. 3) and Kitaboodeen, deceased, on the 21st idem, to the house of Abbas, and prisoner Nayan (No. 8), and took their wives and their mother from their own house to theirs, kept them one day, and sent them home in the evening. On the next day the prisoners on the other side, Kabil Mullik (No. 6), Zaheer Mullik, (No. 7), Nayan (No. 8) and Roopaye (No. 9), went to retaliate to the house of the prisoner Moneeroodeen (No. 4), the brother of Kitaboodeen, seized their mother and dragged her, as she states, by her hair to the house of the prisoner Kabil Mullik (No. 6), about twelve beegahs distant from her own. On this her sons, Moneeroodeen (No. 4) and Kitaboodeen, deceased, and Manik, deceased, (who had a *soolfee* in his hand,) and the prisoners Nos. 3 and 5 went together to rescue her, as it was very natural that they should do, and coming to the house of Kabil Mullik (No. 6) a fight ensued, when the last, who had a *neza*

in his hand (a long and strong bamboo with a broad spear-head and very sharp), thrust it into the belly of Kitaboodeen, who fell and died immediately, and not deterred by his death, on Manik's coming up and taking his wife's hand, he thrust the *neeah* into his bowels also, when the wounded man fled a short way holding his hand over the wound, and then fell. He was taken up by prisoner Ukburoollah (No. 5), and carried into his house, where he died the next morning. The body of Kitaboodeen remained before the house of Kabil Mullik (No. 6), where it had fallen. Prisoner Zaheer Mullik (No. 7) had a mark of a blow of a *lattee* on his head, and Kabil Mullik (No. 6) received a trifling wound on the thigh, judging from a small scar on that part.

"The civil assistant surgeon deposes that the wound on each body was sufficient to cause death; but he could not say from the decomposed state of the bodies whether they had been inflicted during life or not.

"The prisoners Nos. 3, 6, 8 and 9 confessed their participation in the affray in the Mofussil. Kabil Mullik (No. 6) confessed also in the magistrate's court and before me. He says that he is a connexion of Kitaboodeen's mother, and that prisoners Nos. 7, 8 and 9 had seized and were bringing her to his own house when he interfered to protect her and took her in; that her son Kitaboodeen with the others came to take her away, and attacked his house; that when his brother was struck he took a spear and wounded Kitaboodeen and then Manick who was preparing to insult his wife. Moneeroodeen, (No. 4) denies all knowledge of the matter; No. 5, Ukburoollah says that he looked on at a distance; and No. 7, Zaheer Mullik, that he got a blow on the head at the commencement, and was senseless during the rest of the battle.

"It will have been seen from the above that the prisoners Nos. 3, 4 and 5, with Kitaboodeen and Manik, who were killed on one side, came to the house of No. 6, Kabil Mullik, to rescue the mother of one of them, who was held in durance there by No. 6 and his party; that a fight ensued in which Kabil Mullik (No. 6) killed first Kitaboodeen, and not satisfied with the slaughter of one man who lay dead before him, slew Manik also, who threatened to take or did take the hand of his wife; that both parties were aggressors, but that only No. 6, Kabil Mullik and Manik had deadly weapons, of which the first made most desperate use. The jury convicted No. 6, Kabil Mullik, of being the principal in an affray attended with the culpable homicide of Kitaboodeen and Manik, and the wounding of himself and Zaheer, and the remaining prisoners of aiding and abetting in the same. In this verdict I concurred; but it appeared to me from the fact of two men having been killed in

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this affray by Kabil Mullik alone, that he deserved a higher punishment than I had it in my power to inflict; and I have therefore reported the case and recommend that No. 6, Kabil Mullik, should be imprisoned for ten (10) years, and the rest for five (5) years, with labor in irons."

Remarks by the Nizamut Adawlut.—(Present: Sir R. Barlow, Bart., and Messrs. W. B. Jackson and R. H. Mytton).—MR. R. H. MYTTON.—"The circumstances, out of which this occurrence arose, are briefly as follows:

"A relation of the second party enticed away a widow of the family of the first party and married her. The first party seized three of the female connexions of the second party, and kept them for a day by way of reprisal. They are said to have been exposed to indignities during their detention. The second party in retaliation seized the mother of two of the first party, and shut her up in the house of one of them (the prisoner Kabil). Hearing of this, the first party, including the two deceased, went, one, (Manik, deceased,) armed with a spear, and the rest with *lattees* to release the captive from the house of Kabil (prisoner No. 6). They were met at the door by Zaheer, his brother, (prisoner No. 7,) who remonstrated against their entering the house, on which Kitaboodeen (deceased) and Moneeroodeen (prisoner No. 4) hit him with their *lattees* and knocked him down; he cried out that he was murdered, upon which Kabil speared Kitaboodeen with a spear he had borrowed some days previously, it is alleged, for the purpose of killing foxes. At this conjuncture Manik was dragging by the hand the wife of Kabil, who was sitting in the verandah with a child in her arms. She cried out to her husband 'am I to be insulted in your 'presence'? He advanced and speared Manik in the abdomen, of which wound he died.

"Both these acts are described as following each other closely. All the witnesses, except Shokoor, the brother of Kabil, declare that no other blows than those above described were interchanged, and that the other prisoners did nothing but look on with their *lattees* in their hands. Shokoor did not, until directly asked, state that they used them, and he is interested in making it out an affray.

"The sessions judge is in error in stating that the prisoners Nos. 3, 6, 8 and 9 'confessed participation in the affray.' They described the affair which they witnessed much the same as the witnesses, from whose statements the above account is taken, and, with the exception of No. 6, Kabil, deny using any violence whatever.

"The case is not one of affray in the usual acceptation of that term in our practice, *viz.*, a fight between several persons on each side.

"The acts of both parties in this case should be considered separately.

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The first party went to effect a purpose perfectly legal, viz., the release from duress of the mother of two of their body, but by illegal means, i. e., by force, as evinced by their carrying arms and the violence they used immediately on their reaching Kabil's house. Two only of their party actually struck and wounded a man, but as this violence was in pursuance of the common design of all, all of them are guilty as principals of the assault and wounding of Zaheer, and their offence is aggravated by the example of violence they set the previous day in seizing the females of the second party.

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"The subsequent homicide of two of their own party is not an aggravation of their offence.

"With regard to the homicide of Kitaboodeen and Manik by Kabil, the provocation of the previous day to the last and his party cannot be taken into consideration in considering what grade of homicide those acts legally come under, for sufficient time had elapsed for the passions to subside, and for the aggrieved to appeal to the constituted authorities for redress, which they neglected to do, choosing instead to take the law into their own hands and to make a reprisal.

"In deciding whether Kabil is guilty of wilful murder or only of culpable homicide, it must be considered whether he acted in both instances upon sudden and grave provocation, and whether his acts were or were not wholly disproportionate to that provocation.

"As regards the first homicide, that of Zaheer, it appears that he was actually felled by two violent blows on the head, and that he cried out that he was killed.

"This assuredly was a sudden and very grave provocation to his brother, the prisoner Kabil, and his killing one of the assailants on the spot may fairly be allowed to be only culpable homicide.

"Regarding the second homicide, there is more difficulty. The facts are not so clear. The examination of the witnesses has not been pointedly directed towards eliciting an exact account of this transaction: what degree of violence Manik used to Kabil's wife, whether he pulled her down out of the verandah, what expressions he used to her, and whether he was pulling her or had let her go when Kabil speared him.

"Two witnesses (one of them Kabil's wife) say that when he advanced towards Kabil, Manik thrust his spear at him and wounded him. He showed a scar at the inquiry, but both to the darogah and to the magistrate he declared that he did not know by whose hand he received it.

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"The only provocation he pleads at any stage of the inquiry and trial is, that the deceased pulled his wife by the hand, not that he did this violently or with any indecency.

"This was some provocation, but his return for it was wholly disproportionate and therefore his offence is wilful murder.

"Against Zaheer, Nayan and Roopaye no offence whatever is proved.

"Zaheer, indeed, is rather an aggrieved than an offender. On the first party coming armed to his brother's house he cried *dohay!* was knocked down, and then cried that he was killed. It does not even appear that he ever got on his legs again during the rest of the affair. It is most unjust to hold him guilty of any of the offences charged. He is acquitted.

"Nayan and Roopaye, seeing the first party going to their relatives with *lattees* and spear, ran there with their own *lattees*. It is not proved that they did or even said anything after their arrival. They are also acquitted.

"I consider that a sentence of six (6) months' imprisonment, with a fine of rupees fifty (50), commutable to labor, will suffice for the first party.

"I have found Kabil guilty of culpable homicide of Kitaboodeen and wilful murder of Manik. I think, however, that in awarding punishment, allowance may be made for the state of irritation in which he was, owing partly to the aggression of the previous day and to the coming of the opposite party to his house with arms. This last he had, however, provoked by imprisoning the mother of Kitaboodeen, and therefore, I deem no sentence less than transportation for life adequate.

"The treatment of this case by the sessions judge evinces much want of judicial discrimination. Moreover, under Clause 2, Section V. Regulation LIII. of 1803, and the precedents of this court volume IV. page 330, and volume V. page 139, he ought to have passed sentence on the prisoners for whom he considered a sentence within his own competence sufficient punishment.

"As I convict the prisoner Kabil of a count higher than that of which the sessions judge convicts, the voice of another judge is necessary, I believe."

MR. W. B. JACKSON.—"This case is referred to me as regards Kabil only, whom Mr. Mytton proposes to convict of murder of Manik and culpable homicide of Kitaboodeen, while the sessions judge convicts him only of culpable homicide of both Manik and Kitaboodeen.

"There is no doubt whatever that Kabil killed both the men,—Kitaboodeen and Manik: it only remains to decide whether the

circumstances were such as to constitute the crime of murder or one of a less degree, or whether it was altogether justifiable

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Case of
KEFAYUTOOOL-
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others.

It appears that Abbas took away the widow of Barh Ullah, deceased, with her own consent and married her; there was no crime or offence in this act, but Kitaboodeen's party taking offence at it, carried away by force three women of the family of the prisoner Kabil's party, to which Abbas belonged: they kept them a day and made them sweep the house and then let them go; next day Kabil and his party went and carried away the mother of Kitaboodeen and placed her in the prisoner's, Kabil's, house. She was not ill-treated, but left with Kabil's wife; then Kitaboodeen and others on the same day went to Kabil's house; Manik was one of the party, and carried a spear. On their entering the house, Zaheer, a connexion of Kabil's, forbade them; it does not appear that any demand was made for the production of Kitaboodeen's mother, though it is in evidence that she was in the house then; but without a word said, Kitaboodeen and Moneroodeen struck Zaheer on the head with *lattees* and knocked him down: he called out to Kabil that he was killed. Kabil then struck Kitaboodeen with a spear which killed him; then Manik, who had a spear, wounded Kabil slightly, and seizing Kabil's wife, who was sitting at the door of a room with a child in her arms, by the arm, began to drag her along; she called out to Kabil that she was being disgraced in his presence, and in fact appealed to him for protection; he then struck Manik with a spear once in the belly, Manik then let her go and ran away; but died of the wound next day.

"Now I have no doubt that Kabil knew these men came for their mother whom he had in the house; but they were not justified in knocking down Zaheer; had they merely forced their way in and taken out the woman they would have been justified, but they knocked down Zaheer, and this in some measure extenuates the act of Kabil in spearing Kitaboodeen; again Manik's attack on Kabil's wife was unjustifiable, as it was not necessary that he should do this in order to attain his legitimate object, the recovery of Kitaboodeen's mother. It seems to me that Manik intended to carry her away by way of retaliation. This, with the additional circumstance that Manik had wounded Kabil with his spear, in some measure extenuates the act of Kabil in striking Manik with the spear. I do not consider either of Kabil's acts to amount to murder, inasmuch as there were in each, circumstances of provocation; the dragging away a man's wife by force in his presence would justify his using violence to set her free; but in this case the party offering the violence had some excuse in the detention of the mother of his relation Kitaboodeen. Taking all the circumstances into consideration, and especially that Kitaboodeen's party were the original aggressors, I would convict Kabil of culpable homicide of Kitaboodeen and Manik,

1852. and would sentence him to imprisonment with hard labor and irons for ten (10) years."

November 5. SIR R. BARLOW, BART.—"I concur with Mr. Jackson in the conviction of the prisoner Kabil on the charge of culpable homicide of Manik. The deceased seized Kabil's wife, who appealed to her husband for protection, when the prisoner, whose brother Zaheer had shortly before been attacked by Manik's relatives and party and felled to the ground, in defending her, speared Manik, who was similarly armed and had gone to the assistance of his party. The sessions judge has recommended a sentence of ten (10) years' upon the prisoner No. 6, Kabil. I concur with Mr. Jackson, in that sentence."

Case of
KUFAYUTOOL-
LAH and
others.

PRESENT:

W. B. JACKSON, Esq., *Judge*.

GOVERNMENT AND RAMDIAL SINGH

versus

SONOPHOOL (No. 12), RAMNATH (No. 13) AND BOO-TOO (No. 15).

1852.

November 6.

Case of
SONOPHOOL
and others.

Appeal re-
jected in af-
firmation of
sentence pass-
ed by the ses-
sions judge.

CRIME CHARGED.—1st count, resistance of process, in having by force prevented the darogah of thanna Dhanca from searching the houses of certain persons suspected of having been concerned in a case of burglary and theft of property valued at rupees 113-7-0, and in assaulting the prosecutor in this case, Ramdial Singh, who had accompanied the police; 2nd count, having at the same time, detained the darogah in the discharge of his duty and prevented him from searching the house of one Sonophool, a suspected party in the above case; and 3rd count, No. 13, having set fire to the house of Pershad (his brother), with a view to disturb the police in the discharge of their duties, and prevent the finding of the property stolen.

CRIME ESTABLISHED.—Resistance of process, in having by force prevented the darogah of thanna Dhanca from searching the houses of certain persons suspected of having been concerned in a case of burglary and theft of property valued at rupees 113-7-0, and in assaulting the prosecutor in this case, Ramdial Singh, who had accompanied the police.

Committing Officer, Mr. F. A. Glover, officiating joint magistrate of Chumparun, Sarun.

Tried before Mr. C. Garstin, sessions judge of Sarun, on the 2nd August 1852.

Remarks by the sessions judge.—"This is the case of resistance of process alluded to in the preceding case.* It appears

* See case of Rughoobur and others, 1st November 1852, p. 674.

that when the police, after having secured the prisoner Raghooobur, went to search the houses of some other parties, they were opposed by the prisoners and a number of other Ahirs residing in the same village, and were fairly beaten off, the prisoner rescued, and a part of the thatch of Pershad's house set on fire and burnt. All the prisoners plead '*not guilty*,' but state nothing satisfactory in their defence, and call no witnesses; and as the first charge has been fully brought home to those above named, they have, in concurrence with the finding of the law officer, been sentenced for it as mentioned."

Sentence passed by the lower court.—Nos. 12, 13 and 15, each six (6) months' imprisonment, without irons, and a fine of rupees 100, or imprisonment for a further period of six (6) months.

Remarks by the Nizamut Adawlut.—(Present: Mr. W. B. Jackson.)—"I see no reason to interfere with the sentence passed on the prisoners Sonophool, Ramnath and Bootoo."

PRESENT:

W. B. JACKSON, Esq., *Judge*.

GUNGA ROUNIAR

versus

JHINGOORY.

CRIME CHARGED.—1st count, burglary and theft of property valued at rupees 10-6-0; and 2nd count, knowingly receiving and being in possession of stolen property.

CRIME ESTABLISHED.—Burglary and theft.

Committing Officer, Mr. R. H. Russell, joint magistrate of Chumparun, Sarun.

Tried before Mr. C. Garstin, sessions judge of Sarun, on the 28th July 1852.

Remarks by the sessions judge.—"The prisoner in this case having robbed the house of the prosecutor, was taken by a chowkeedar as he was making off with a part of the stolen property, (a *thalee*) and a sepoy's bayonet on his person. Both at the thanna and to the magistrate he confessed his guilt, and said that he had been instigated to commit the theft by a man named Shiosahoy; but on his trial he denies it, and says that the case has been instituted from enmity. There is, however, ample proof of his guilt: wherefore he has, in concurrence with the *futwa*, been convicted and sentenced as noted."

Sentence passed by the lower court.—Four (4) years' imprisonment, with labor in irons.

1852.

November 6.

Case of
SONOPHOOL
and others.

1852.

November 6.

Case of
JHINGOORY.

The court saw no reason to interfere with the sentence passed upon the prisoner, appellant.

1852.

November 6.

Case of
JHINGOORY.

Remarks by the Nizamut Adawlut.—(Present: Mr. W. B. Jackson.)—"The prisoner Jhingoorry confessed the crime charged against him and that he had been previously convicted of theft before the magistrate. I see no reason to interfere with the sentence of the sessions judge."

PRESENT:

SIR R. BARLOW, BART., *Judge.*

RAMDHUN CHOWDRY

versus

GOLAMEE MANJHI, CHOWKEEDAR (No. 31) AND
DOULUT MEER (No. 32).

1852.

November 6.

Case of
GOLAMEE
MANJHI,
CHOWKEEDAR
and another.

CRIME CHARGED.—1st count, dacoity on the night of the 27th March 1852, corresponding with the 15th Cheyt 1258, in the house of the prosecutor, and plundering therefrom property of the value of rupees 19-1-6, and wounding the said prosecutor and the witnesses Bhojrub Manjhi, Chowkeedar, and Nobee Panja, at the time of the dacoity; and 2nd count, belonging to a gang of dacoits.

The evidence for the prosecution being satisfactory, the appeal of the prisoners was rejected.

CRIME ESTABLISHED.—Dacoity in the house of the prosecutor, and plundering therefrom property to the value of rupees 19-1-6, and wounding the said prosecutor and witnesses Bhojrub Manjhi, chowkeedar, and Nobee Panja, at the time of the dacoity.

Committing Officer, Baboo Jogeshchunder Ghose, deputy magistrate of Ghurbetta, West Burdwan.

Tried before Mr. P. Taylor, sessions judge of West Burdwan, on the 31st August 1852.

Remarks by the sessions judge,—“The prosecutor's house was attacked by ten or twelve dacoits with *mussals*, swords, *lattees*, *thauggees*, and other weapons, at about half past 12 o'clock on the night mentioned. Two or three of them seized him while lying asleep in his verandah, kept him down, and beat him, when he screamed for assistance. Among the blows administered, he got one on his forehead, which he declared was from a sword, or some other sharp weapon. This was slight, and might have been inflicted by a *lattee*, as the cicatrice left by it was not rectilinear. His terrified wife opened the door of the house to the robbers, who entered it and took what they pleased. Some of them then came out into the road, and some yet remained inside, when Nobee Panja (witness No. 2) came to see what was the matter, with a *lattee* in his hand, and was instantly attacked by the dacoits. He fought a little with them, and on getting a blow or two was obliged to retreat, but not before he had recognized four persons, the two prisoners included.

"After Nobee's defeat, came up the chowkeedar Bhoyrub (witness No. 1), who courageously attacked the dacoits in the road with his *lattee*, and fought with them some little time, during which he received various *lattee* blows, and two slight sword-cuts, *viz.*, one which must evidently have struck his *lattee* also, on the fore-finger of the right hand, and one on the flat part of the left forearm. Neither of these wounds was severe, and they were just such as might have been received in a scuffle, in which swords were going, but *lattees* interfered with their sweep. This witness deposed before me that he had knocked a sword out of the hand of one Bulram Das, and on seizing it wounded one Chundee Day, whereupon the rest of the robbers had rushed upon him, knocked the sword out of his hand, and, after putting out the *mussals*, made off.

"The statements of the above two persons formed, with that of prosecutor, the only direct evidence against the prisoners, but were circumstantial, concurrent and satisfactory. That of the chowkeedar was a little adorned and amplified here and there, for the sake of his own credit, but he adhered to his main facts with sufficient tenacity.

"The evidence of the above was supported by that of the neighbours, foudjaree gomashas, and others, to whom they had first mentioned the names of the recognized dacoits, and also by the very suspicious nature of the articles found in the houses of the two prisoners, when searched.

"None of the stolen property was discovered therein, but the huts inhabited by the prisoner Golamee (No. 31) and his brother Gungaram (also recognized at the time of the dacoity, but released by the deputy magistrate,) produced a small shield, a ramrod, a couple of blank stamped papers, and an anonymous letter, evidently alluding to the concoction of some deed of darkness. The habitation of Doulut Meer (prisoner No. 32) contained a sword, a *kattar*, or broad-bladed dagger, a bow and arrows, and a species of shield called *chengree*, with jingling chains attached, which is notoriously used by dacoits.

"The discovery of these articles was distinctly sworn to by the proper witnesses.

"There appeared to be no enmity between the prisoners and the prosecutor and his witnesses, nor anything to induce the remotest suspicion of the case being a conspiracy or an invention.

"The defence of the prisoner No. 31 was, that the same had been got up by the prosecutor and his two witnesses Nos. 1 and 2; that the former had a dislike to him, because he did not belong to his *dul*, or caste society, and that the latter was connected with prosecutor; that he was on guard at the *mall* catcherry till only three or four *ghurries* of the night remained, and awoke various persons during the night, whom he named as

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MANJHI,
CHOWKEEDAR
and another.

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Case of
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and another.

witnesses; that the shield had belonged to his father, who was a chowkeedar, the *benamee* letter to his sister's son-in-law, one Manick Manjhi; that he had picked up the ramrod at a *shadee*, and that he had bought the stamps for a land transaction, which was never completed.

"The defence of prisoner No. 32 was, that the case had been got up against him by the *foujdaree gomashta*, Deeanut Kazee (witness No. 4), who had a caste quarrel with him about a Harin woman, whom he kept; that Nobee and the chowkeedar were the said Deeanut's fellow conspirators; that he had been at home all night; that he had refused to give himself up to Deeanut after the dacoity, because he was his enemy, and had no authority to take him into custody; and that the weapons found in his house had belonged to his grand-father and brother.

"The witnesses for the defence did not support the allegations made by the prisoners, and I therefore convicted the latter of the dacoity on full legal proof, and sentenced them as noted.

"There was nothing to show distinctly that they belonged to a regular band of dacoits, though it appeared highly probable such was the case.

"The names of the other prisoners recognized were:

No. 1, Ramjan Newjee.	No. 4, Hara Manjhi.
" 2, Nuffur Teentoolia.	" 5, Chundee Dey, and
" 3, Buloram Doss.	" 6, Gungaram Chowkeedar.

"Nos. 3, 4 and 6 were sent for and made to answer by the deputy magistrate, but released; No. 5 had fled, and there was not, apparently, sufficient proof against the others, to render their *chalan* expedient. The habitations of all of them were searched, without result."

Sentence passed by the lower court.—No. 31, twelve (12) years' imprisonment, with labor in irons, in banishment, and two (2) years in lieu of stripes, also with labor in irons, and two (2) years more in consequence of his being a chowkeedar,—total, sixteen (16) years' imprisonment, with labor in irons, in banishment, and No. 32, twelve (12) years' imprisonment, with labor in irons, in banishment, and two (2) years more in lieu of stripes, total, fourteen (14) years' imprisonment, with labor in irons, in banishment.

Remarks by the Nizamut Adawlut.—(Present: Sir R. Barlow, Bart.)—"I see no grounds for interfering with the sessions judge's sentence on the appeal of the prisoners. The prisoners were distinctly recognized by the chowkeedar and by Nobee in the act, and they were both attacked when they went to prosecutor's assistance. The prosecutor also recognized the prisoner Golamee (No. 31), and the names of both prisoners were mentioned on the spot by prosecutor and the two eye-witnesses. Those cited for the defence prove nothing."

PRESENT :

W. B. JACKSON, Esq., *Judge.*

R. H. MYTTON, Esq., *Officiating Judge.*

GOVERNMENT AND BHOLYE DHOPY

versus •

RAJCHUNDER DHOPY (No. 1) AND RAMGHUTTY
DHOPY (No. 2). •

CRIME CHARGED.—1st count, Nos. 1 and 2, wilful murder of Kunhye Dhopy ; 2nd count, No. 2, accessory after the fact to the said murder.

1852.

Committing Officer, Mr. W. M. Beaufort, magistrate of Backergunge.

November 8.

Tried before Mr. A. S. Annand, officiating sessions judge of Backergunge, on the 4th October 1852.

Case of
RAJCHUNDER
DHOPY and
another.

Remarks by the officiating sessions judge.—“ The prosecutor Bholye Dhopy deposes, that one Tuesday near the end of Assar last, he went to a village called Tarashee, to purchase some wood and bamboos. On the Thursday following, his neighbours Bulla and Futtick came to him there and told him that his brother Kunhye Dhopy had disappeared. On hearing this, he immediately returned home, but could not find his brother. On inquiring he learnt from Kashenath Dhopy, who resided in the same house with him and his brother Kunhye Dhopy, that on the previous Tuesday, prisoner No. 2, Ramghutty Dhopy, had sent the latter with some rice to Khrpara to sell it, and buy salt with the proceeds, and he had not since returned. On hearing this the prosecutor gave intelligence to the village *matburs*, when Komul Sheekdar, Shujaooddeen, Sham Dhopy, Sonae Biswas and Lalchand Roy, assembled in the house of Sham Dhopy to inquire into the matter. They sent for Ramghutty Dhopy, and charging him with having sent prosecutor's brother to buy salt, and saying that he had not been seen afterwards, asked him what had become of him ; that he remained silent awhile, and then said that Rajchunder Dhopy had killed him. On being asked why, he gave no answer. They then made inquiries for Rajchunder, but he had left his house and was not to be found. Prosecutor then went to the thanna, and the mohurir came immediately and apprehended Ramghutty ; when on further inquiry he pointed out where the body of Kunhye Dhopy was, hidden under the weeds in a *bheel*, and going with the mohurir took it up. When the body was found, there were two wounds on the neck, one on each cheek, one on the left shoulder, one on the upper part of the right arm, and one on the right wrist ; all inflicted by a *dão*

In a case of
wilful and
premeditated
murder of one
paramour by
another, sen-
tence, upon the
principal,
death.

Ditto on ac-
cessary after
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removing and
concealing the
body, one
year's impris-
onment with
labor in irons.

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Case of
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apparently. On the Sunday following, the villagers seized prisoner No. 2, Rajchunder Dhopy, and brought him before the mohurir, when both he and Ramghutty confessed their participation in the affair and were sent into the sudder station. The reason that caused Rajchunder to kill Kunhye was because he had a criminal intimacy with Musst. Sreemutty, the widow of Rajchunder's uncle and the aunt of Ramghutty, who lived in the same house with them. The body was found at a distance of one *ghurrie* from the house of the prisoners. The prosecutor's house in which deceased lived is twenty *beegahs*' distant from that of the prisoners. The criminal intimacy between deceased and Musst. Sreemutty had existed for four or five years, and since Kartick last, when Rajchunder Dhopy came to live with Ramghutty Dhopy, he had always threatened the deceased. Kunhye Dhopy was unmarried. Rajchunder killed the deceased about two *beegahs*' distance from Ramghutty's house. Ramghutty, his mother, his wife, a girl, and Ramchunder, all live together. Ramghutty did not object to the intimacy that existed between deceased and Sreemutty, but Rajchunder did, and used to threaten him so frequently that prosecutor expected he would some day kill him. Has heard that Rajchunder himself had a criminal intimacy with Sreemutty, which commenced on his arrival in Kartick last, but that she preferred the deceased. The body was concealed deep down under the weeds and water of the *bheel*. Rajchunder brought the *dão* from a rice field, where he had hidden it, and said he had killed Kunhye with it. The bamboo and ropes produced were brought out of his house by Ramghutty, and the prisoner said that they had slung the body on it, and so carried it away and secreted it in the *bheel*.

"In the Mofussil Rajchunder (No. 1) confessed that he had killed Kunhye Dhopy on account of the criminal intimacy which he had with Musst. Sreemutty, the widow of his uncle; that they were constantly quarrelling on that account, and that having laid a plan with his brother Ramghutty to get rid of deceased, they lay hid on the road to waylay him on the night of the occurrence, and when he came by they attacked him, Ramghutty striking him with a *dão* and he holding his head down by the hair until he died. They then carried away the body and hid it where it was found in the *bheel*. He denied all knowledge of the case before the magistrate and in my court. Ramghutty confessed at the thanna that on the day of the occurrence he sent Kunhye with a seer of rice to bring salt from Kurpara; but when he found he did not return as expected at night, he went to sleep; that about 10 or half-past 10 o'clock, Sreemutty called him and said that she heard a noise outside the house, and that somebody was calling him. On this, going out towards

the south-east, he saw Kunhye Dhopy lying dead; that he returned directly and told Sreemutty, and they both proceeded to the spot where the body lay, and then went to their house again, where after a time Rajchunder came up, and after some hesitation, on being accused of having killed Kunhye, seized the feet of deponent and asked him what was to be done; that then he agreed to help him to conceal the body, in pursuance of which he brought a bamboo and ropes and slinging it on the former, he and Rajchunder took it away and hid it where he afterwards pointed it out, and it was found in the *bheel*. This prisoner also denied all knowledge of the case before the magistrate and in this court.

"Witness No. 4, Musst. Sreemutty, deposes, that on the day of the murder deceased had eaten his dinner in her house, when Ramghutty sent him to the *haut* to get some salt; that about 9 o'clock that night she heard a cry, and the voice sounded like that of the deceased, when she called Ramghutty Dhopy. It was then raining; but they went out notwithstanding, and saw the body of Kunhye, with a great quantity of blood laid upon it, lying upon an *ail*, at a distance of two *russees* from the house, and some person going away towards the south, could not tell exactly who he was, but took him for Rajchunder, from his long hair. She then called to the neighbours that some one had killed Kunhye, but no one came out; when she and Ramghutty returned to the house. Rajchunder returned after about four *ghurries* and said something to Ramghutty, which witness did not understand, when they both went out together and returned about 12 o'clock at night. Rajchunder then asked witness to go with him to the neighbour's houses who had heard her call out that Kunhye was murdered when he wished to give a rupee to Rammohun Mundul (witness No. 5) and Eshwur (No. 6) not to divulge what they had heard; but they abused him and sent him away. On the night of the murder Ramghutty's wife and his mother were both absent. Identifies the *ddo* as Rajchunder's; allows that there has been a criminal intimacy between her and Kunhye, deceased, for the last ten or twelve years. Rajchunder had criminal connexion with her also sometimes *juburdusti*,—she did not like him. Deposed before the magistrate that Rajchunder confessed the murder before her on the night in question, and repeats it here, saying, that she had forgotten to mention it before. After the murder the prisoner Rajchunder took witness away to another mouza called Paikpara. Witness No. 8, Shujaoodin, and No. 7, Sonatun and others, fully corroborate the statements of the prosecutor and Musst. Sreemutty. The body when sent in was in such a state of decomposition as to preclude the possibility of examination.

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"The circumstances of this case as detailed in the evidence leave no doubt upon my mind that the murder was committed by Rajchunder Dhopy through jealousy of the deceased, whom Musst. Sreemutty preferred to him. It is possible that he was assisted in the deed by his relation Ramghutty Dhopy, but there is no evidence to that effect; and as it does not appear that the latter had any previous dislike or animosity to Kunhye, I am inclined to believe the story told by him and Sreemutty.

"The assessors convicted the prisoner Rajchunder (No. 1) of the wilful murder of Kunhye Dhopy, and the prisoner Ramghutty (No. 2) of concealing the crime. I agree in the conviction of Rajchunder (No. 1) and seeing no reason why a capital sentence should not be passed upon him, recommend that he should be sentenced to suffer death; and convicting Ramghutty (No. 2) of being an accessory after the fact, recommend that he be imprisoned for three (3) years, and pay a fine of rupees fifty (50) within one month, or labor until such fine be paid."

Remarks by the Nizamut Adawlut.—(Present: Messrs. W. B. Jackson and R. H. Mytton.) MR. R. H. MYTTON.—"The proof against the prisoner No. 1, Rajchunder, consists,—*first*, in the evidence of Sreemutty, to the effect that she recognized a person like him, going from the place where she found the corpse, and that Rajchunder afterwards came and after some conversation asked Ramghutty to assist him in removing the body, and also offered witnesses Rammohun and Eshwur a rupee not to mention the circumstance.

"*Secondly*,—In the evidence of the said Rammohun and Eshwur to Rajchunder's plainly admitting the murder and offering them one rupee to keep it secret.

"*Thirdly*,—The evidence of Akil Chowkeedar, who apprehended him, and to whom he immediately confessed his guilt, and

"*Lastly*,—The confession to the thanna mohurir of assisting another in the murder, by holding the deceased by the hair while the other struck the blows with a *dao*. He produced the *dao* from where it was squeezed in the mud.

"There is no proof of complicity against Ramghutty. It is not in evidence, as stated by the sessions judge, paragraph 4, that the prisoner Ramghutty *sent* the deceased to the *haut*, but only that he said you are going to *haut*, exchange this rice for salt for me.

"Had he *sent* the deceased, it would afford presumption of his being an accessory *before* the fact.

"The evidence of Sreemutty tends to show that Ramghutty was in his house at the moment of the murder. The instrument of death belonged to the other prisoner, Rajchunder, and that prisoner produced it from its place of concealment. The presumption, therefore, is, that he alone committed the murder. Of his

being a principal in it, there is full legal and satisfactory proof. By his own account the murder was premeditated and the deceased waylaid for the purpose. I concur with the officiating sessions judge that he should suffer death.

"I also concur with him in convicting Ramghutty of being an accessory after the fact; but considering that he at the earliest stage of inquiry, *viz.*, when questioned by the principal men of the village, revealed all he knew, I deem that one (1) year's imprisonment, with labor in irons, is adequate to his offence.

"I must observe that the manner in which the charges have been recorded is excessively slovenly, and it is surprising that the sessions judge did not notice the defects and return the calendars for correction before proceeding with the trial. Instead of this he has adopted the errors.

"What is meant in the English calendar in the frontispiece to the trial, and the sessions judge's marginal note by 'No. 1, and count 1 of No. 2?' The No. 1 and No. 2 are the prisoners. How can there be a count 1 of a prisoner?"

"I have presumed that the charges, as recorded in the Bengalee calendar, were read to the prisoners for them to plead to.

"The first count thereof is correctly drawn and therefore discrepant from the English version. The word used for 'accessary' in the second count is not that prescribed by Circular Order No. 8 of volume IV. and why is the word 'second' (*dwitio*) introduced? This count is worthless. I convict Ramghutty, on the principle that a conviction may be had of being an accessory when the charge laid is of being a principal. This prisoner was charged on the first count as a principal."

MR. W. B. JACKSON.—"I concur in convicting the prisoner Rajchunder of the murder and in the sentence of death on him; also in convicting Ramghutty as accessory after the fact and in the sentence of one (1) year's imprisonment."

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RAJCHUNDER
DHOPY and
another.

PRESENT :

A. J. M. MILLS, Esq., *Officiating Judge.*

GOVERNMENT AND MOHESH CHUNDER SEN

• *versus*

MOHESH CHUNDER DUTT (No. 5), SOORJ NARAIN SHOAM (No. 6), GOPAL KISHITO KUR (No. 7), JUGGERNATH DOSS (No. 8) AND LALL CHAND NUNDEE (No. 9).*

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MOHESH
CHUNDER
DUTT and
others.

The Nizamut Adawlut confirmed, on appeal, the sentence passed by the sessions judge.

CRIME CHARGED.—1st count, Nos. 5 to 9, burglary in the house of Mohesh Chunder Sen, in which his property to the value of rupees 70-6-6 was carried off; and 2nd count, Nos. 5 to 8, receiving and retaining the said property, knowing it to have been stolen.

CRIME ESTABLISHED.—Nos. 5 to 8, burglary in the house of Mohesh Chunder Sen, in which property to the value of rupees 70-6-6 was carried off, and receiving and retaining the said property, knowing it to have been stolen, and No. 9, burglary in the house of Mohesh Chunder Sen, in which property to the value of rupees 70-6-6 was carried off.

Committing Officer, Mr. W. M. Beaufort, magistrate of Backergunge.

Tried before Mr. A. S. Annand, officiating sessions judge of Backergunge, on the 6th September 1852.

Remarks by the officiating sessions judge.—"This case was committed to the sessions by the magistrate, as two of the prisoners in it were implicated in the burglary above reported, and one of them had been previously punished for theft.

"Prosecutor, who is a vakeel in the sudden moonsiff's court at Burrisaul, states that a burglary took place in his *baree* at Mohilorah, in thanna Gournuddy, on the 18th March last, (6th Cheyt,) three holes being dug into one house, and three into another, one of which in each house was large enough to admit a man, and two *petaraks* broken open, from which property to the amount of rupees 70, odd annas, were carried off. When the Gournuddy darogah seized the prisoners in the case above reported, deponent heard that they had confessed having committed a burglary in his house and sent his servant Becharam to the thanna to inquire further, when he recognized some of the property found in the houses of prisoners as belonging to prosecutor, and being part of that which had been stolen from his house in Cheyt last. Prosecutor himself was not at home when the burglary took place. Prisoner No. 5 confessed at the

thanna and before the magistrate, that on the 6th Cheyt he went at night with prisoners Nos. 3, 8, 9 and 6, to Mohilora, where the prosecutor lives, and that he and another remained on the banks of a tank whilst the rest went into the *baree*; that after some time Nos. 8 and 9 came back with some *lotahs*, *tulas* and *thalees*, in their hands. Shortly after the other prisoners came out with bundles, and all went away; that they put part of the property into his house, where it was found by the darogah. Prisoners Nos. 6, 7, 8 and 9 all confessed, at the thanna their participation in the burglary, but denied all knowledge of it before the magistrate and in my court.

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Case of
MOHESH
CHUNDER
DUIT and
others.

"The property found in the houses of Nos. 5, 6, 7 and 8 was fully and clearly identified as his own by the prosecutor and his witnesses, both at the thanna, in the magistrate's court, and before me. The prisoner No. 9 confessed at the thanna, and lives in the same house with prisoner No. 6, in whose house several articles belonging to the prosecutor were found.

"I concurred with the jury in convicting the prisoners Nos. 5, 6, 7, 8 and 9, as shown in column 10, and sentenced them accordingly.

"The property stolen being under rupees one hundred (100); I only awarded the punishment that might have been given by the magistrate if he had tried the case, this being the first time the prisoners had been convicted."

Sentence passed by the lower court.—Each three (3) years' imprisonment, with labor and irons.

Remarks by the Nizamut Adawlut.—(Present: Mr. A. J. M. Mills.)—"All the prisoners have appealed, but they have advanced nothing in their petition to shake the strong evidence against them. Their guilt is satisfactorily established, and I reject the appeal."

PRESENT :

W. B. JACKSON, Esq., *Judge*.JHUNDOO ABKAR, TILUCK CHOWKEEDAR AND
GOVERNMENT*versus*CHOO LHUN RUJWAR (No. 1) AND BUNDHO RUJWAR
(No. 2).

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Case of
CHOO LHUN
RUJWAR and
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* The Nizamut Adawlut, on account of the unsatisfactory nature of the evidence for the prosecution, acquitted the prisoners, agreeing with the zillah law officer, in dissent from the sessions judge.

CRIME CHARGED.—1st count, No. 1, burglary and theft of rice, valued at rupees 7-0-0 ; 2nd count, wounding Tiluck Chowkeedar in execution of his duty in trying to apprehend thieves ; and 3rd count, No. 2, accomplice in the said burglary and theft. "

Committing Officer, Mr. A. G. Wilson, deputy magistrate of Nowada, Behar.

Tried before Mr. T. Sandys, sessions judge of Behar, on the 16th October 1852.

Remarks by the sessions judge.—" Towards morning of the 16th September last, the prosecutor's house was broken into, and plundered of grain, now approaching famine prices, by burglars, who were however disturbed by Tiluck, chowkeedar of the village, second prosecutor and his assistant Sookur (witness No. 1). The burglars turning on the former, wounded him severely with battle-axes, (large scars being still visible at the trial over and along the left arm and on the back,) and escaped.

" Jhundoo, prosecutor, deposes to the occurrence, and to his finding the chowkeedar cut down, and the burglars escaped.

" Tiluck Chowkeedar and his companion Sookur (witness No. 1,) depose to the former having been attacked by Choolhun, (prisoner No. 1) and Chumun, both also declaring they had wounded the latter, who, together with the other burglars named by them, and the other two witnesses, Bhola (No. 2) and Poorun (No. 3), have absconded.

" Bhola and Poorun depose they reached the spot as the burglars were running off, and that they had recognized the two prisoners amongst them. Mungur Abkar (witness No. 9), only saw the burglars running off without being able to recognize any one of them, but heard from Tiluck that Choolhun had wounded him.

" The prisoners, residents of distant villages, and Bundho, (prisoner No. 2) a chowkeedar, plead '*not guilty*' without offer-

ing any intelligible defence. Before the police they could not account for the accusation in any manner ; and before the magistrate and this court, they set up the most frivolous and inconsistent pretences. Choolhun before the magistrate assigned the accusation to his and Tiluck's having one day exchanged abuse, and before this court to his having lent him one rupee, which he would not repay. Bundho before the magistrate and this court, to his having had a squabble with Tiluck at a liquor shop some two months ago. Neither have ever called any witnesses.

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"The *futwa* of the law officer acquits the prisoners on all the counts, observing that there was only one eye-witness to the attack, Sookur ; and he did not credit the recognition by the other witnesses of the burglars, whilst running off on a dark night.

"There are certainly some slight discrepancies, and an indifferent tone in the evidence for the prosecution, but to which the law officer takes no objection, and which are much more likely to be truthful, as they are natural to the native character ; for, had the prosecution been a trumped-up one, the details of evidence would have been far more complete and carefully studied. The evidence, in fact, reduces itself to this, that there is no other testimony to the attack on Tiluck than that of his companion Sookur and his own, which have been consistently given on every occasion, with a slight exception only, as regards the absconded accused, Chumun. So, in like manner, Bhola (witness No. 2) never troubled himself to ask Tiluck, which of the burglars had wounded him, and Jhundoo, prosecutor, did not remember whom Tiluck had named ; whilst Poorun (witness No. 3) and Mungur (witness No. 9), name them as told by Tiluck, adding Chumun's name to that of Choolhun's, the only one originally given by them before the magistrate. The occurrence is said to have taken place towards morning, and considering the character of the evidence as already commented on, I find no good grounds for questioning the recognition of the prisoners by the witnesses generally. If a dark night is to secure robbers from recognition, and for which at least Tiluck and Sookur had ample opportunity, then in many cases, they may rob with impunity. Thus viewing the prosecution, and as totally unopposed by any intelligible defence whatsoever, I do not find myself warranted in concurring in the law officer's acquittal.

"I must note that Chumun, the *gorajt* (witness No. 8), has given contradictory evidence on every occasion, before the police, the magistrate and this court ; and to which the deputy magistrate's attention has been drawn. His contradictions are of little moment, when by his evidence before the police and magis-

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trate, it is evident he could not have been an eye-witness of the occurrence, as professed by him before this court, and as Tiluck's evidence before the police followed his the next day, and has always been consistent in naming the prisoners and others accused, I attach little weight to the omission of their names in the original information given by such a witness.

"I convict Choolhun (prisoner No. 1) and Bundho (prisoner No. 2) of burglary and theft, attended with the wounding of Tiluck, whilst in the execution of his duty, and would sentence them alike to fourteen (14) years' imprisonment, in labor, irons and banishment."

Remarks by the Nizamut Adawlut.—(Present: Mr. W. B. Jackson.)—"The point for consideration is how much credit is to be given to Tiluck's statement and Sookur's: they both swear that they saw the two prisoners, and that Choolhun struck Tiluck: they further say they recognized four others, in fact the whole six who were present. I do not believe this; but there is no doubt that Tiluck was struck by the thieves; but he has contradicted himself in respect to the nature of the blows he received from them; in fact, though there is probably some truth in his and Sookur's statement, it is impossible to distinguish the truth from the falsehood, and I therefore acquit the prisoners Choolhun and Bundho."

PRESENT :

SIR R. BARLOW, BART., *Judge.*

A. J. M. MILLS,

AND

R. H. MYTTON,

} *Esqrs., Officiating Judges.*

TOOFANEE MANJEE AND GOVERNMENT

versus

SHORROOP MANJEE (No. 5), BIRJO CHUNG SIRDAR (No. 6), TOOFANEE CHUNG SIRDAR (No. 7), RAM-LOCHUN CHUNG (No. 8), SHEIKH KOORAN MANJEE (No. 9), KASHEERAM CHUNG (No. 10), SHEIKH GADDOO (No. 11), ARRADIHUN SHEIKH (No. 12), KASHEE MANJEE (No. 13), DOOKHEEAH TEOR MANJEE (No. 14), SHEIKH AGORDEE (No. 15) AND SHEIKH POKAIE (No. 16).

CRIME CHARGED.—1st count, No. 5, wilful murder of Lukhun Manjee; 2nd count, Nos. 5 to 16, dacoity in the premises of the prosecutor, and plundering property valued at rupees 114-7-0, in which Lukhun Manjee was killed and Toofanee Manjee, prosecutor, wounded; 3rd count, riotous assault, with forcible plundering, not amounting to dacoity, in which Lukhun Manjee was killed and Toofanee Manjee, prosecutor, wounded; and 4th count, Nos. 6 to 12, knowingly receiving and possessing property obtained by the above dacoity or plundering. Committing Officer, Mr. R. Alexander, officiating magistrate of Mymensing.

Tried before Mr. R. E. Cunliffe, sessions judge of Mymensing, on the 19th August 1852.

Remarks by the sessions judge.—“From the evidence of the prosecutor and the witnesses, it appears that prisoner No. 5 had come three times, *viz.*, in Aghun, Magh and Bysakh last, to prosecutor's house to arrange a marriage between his son and prosecutor's daughter, and that deceased, the prosecutor's brother, refused to agree to it, as No. 5 was a bad character, and plainly told him so; and prosecutor states that on the last occasion of his being refused, and told he was a bad character, he said he would show them what kind of a bad character he was; and from the confessions of several of the prisoners it appears that he got up the dacoity, which took place on the night of the 30th Jeyt, when a number of men, headed by No. 5, broke into

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Case of SHORROOP MANJEE and others.

Certain prisoners, convicted of being accomplices in dacoity with murder and wounding, sentenced to imprisonment for life, in transportation; others of receipt of plundered property, knowing it to be such, sentenced to seven years. Question of propriety of sentencing to death for dacoity with

murder, and of the grounds on which the selection of the objects of capital punishment should be made, considered.

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the house in which he was, and No. 5 three times struck at the prosecutor as he was rising from his bed with a *lattee*, who warded off the blows with his left arm, and his keys having been demanded by No. 5, he gave them up, and his box was opened, and his property, including rupees 60 in cash, to the value of rupees 114, was carried off.

"The prosecutor and eye-witnesses state, that deceased on coming out of his house and calling out and opposing the dacoits, was struck on the head with a sword by No. 5 and fell senseless. This part of the evidence I do not consider trustworthy, as the three first eye-witnesses, on being questioned, stated all the dacoits had cloths around their faces except No. 5, which is improbable, for the person whose house was to be attacked knew him well, and he would, doubtless, have taken the same precaution as the others against recognition. The evidence of the civil surgeon shows that the deceased was brought into the hospital insensible, with a wound (from the effects of which he died) on the head, which had been inflicted by some blunt cutting instrument, and it is therefore more probable that the wound was inflicted with a split bamboo by a person not apprehended, as stated in one of the confessions, than with a sword.

"Information was given to the police the next day by the prosecutor, stating that No. 5 had been recognized, but no one else. He was apprehended, and stated that No. 10 came to his house and said Nos. 6, 7, 8, 9, 11 and 14 had started to commit a dacoity at Chechora, but one Bechooa getting ill, they returned, and next day started again, and late at night Nos. 13 and 14 came and told him they had returned without doing what was intended. Before the magistrate he also denied having committed the crime, but said that one day in Jeyt Nos. 13 and 14, and a Nundee's son, came to his house, and on his asking them they said they had been out on a job. The prisoners Nos. 6, 7, 9 and 14 were apprehended, and confessed in the Mofussil having committed the dacoity, as did also Nos. 11, 12, 13, 15 and 16; and No. 8 admitted having purchased a brass vessel from No. 12; and No. 10 said that having asked No. 6 for the loan of rupees 2 and not being able to give it him, he had given him a silver *hunslee*, which he had pledged with Ram Singh Shaha through Musst. Mahamoya. Portions of the property were given up by Nos. 6, 7 and 9, and by persons who had purchased it from No. 12. Prisoner No. 13 also confessed before the magistrate.

"Before this court No. 5 denied the charge, and alleged he was ill at the time, but from the evidence of his witnesses it does not appear that there was much the matter with him. No. 6, ill-treatment by the police, and that he had purchased an ornament from Sheikh Poraneeah, and that the two *hunslees*

were his; of which his witnesses denied any knowledge, and Poraneeah also denied having sold anything to him. No. 7 denied the charge, but declined taking the evidence of his witnesses, as they had colluded with the prosecutor. No. 8 said No. 12 had borrowed rupees 2 from him and paid 4 annas in Jeyt, and in Assar pledged a *batee* for 1 rupee, and that he did not know that he was a bad character, and that it being the property of another person he had put it under a *machan*, and named witnesses to character, who spoke in his favor. No. 9, that being ill-treated by the police he gave up his own property, and named witnesses to character, who spoke in his favor, and purchase of the property, of which the witnesses denied any knowledge. No. 10 said No. 6 had borrowed rupees 2 from him, and on being asked for it said he could not pay, but sent Musst. Mahamoya with his child's *hunslee* to pledge, and that he went with her some distance and afterwards she joined him on the road and gave him the rupees 2, and named witnesses to being at home, and to character; of the former they knew nothing, and the evidence to the latter is doubtful. No. 11 said his brother gave a rupee because the police were about to beat him, and named witnesses to his character, who spoke in his favor. No. 12 that he had been unjustly charged by No. 5, because he had bought a *goat* from his mistress, and had not paid for it, and ill-treatment by the police, and named witnesses to character; but two out of three gave him a bad one. No. 13 had no defence, beyond saying he had been forced to accompany his brother-in-law, No. 5, and that he had been tied with ropes in a cow-house while the dacoity was committed, and that he cut the rope with his teeth and ran away. No. 14, that he is lame (which does not appear to be the case), and that having been asked by No. 5 to go with him about a marriage and refusing to do so, has been implicated by him, and that his confession was extorted; naming witnesses to character, who spoke in his favor. No. 15, ill-treatment by the police, and having disputes with No. 5 and his brother, serving at the same factory, has been falsely charged by them. No. 16, that he has been falsely implicated by No. 5, as he, and Nos. 12 and 15 had bought a *goat* from the daughter of No. 5's mistress, and not having paid for it has been implicated by him; and ill-treatment by the police. The two witnesses named by him gave him a good character, but one of them states that he has done nothing for six months.

"The *futwa* of the law officer declares murder not proved against No. 5, but convicts all the prisoners on violent presumption of dacoity, in which Lukhun Manjee was killed and the prosecutor wounded; and Nos. 6, 7, 8, 9, 10, 11 and 12, also of knowingly receiving property obtained thereby. I would convict all the prisoners, except Nos. 8 and 10, of dacoity, in

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1852. which Lukhun Manjee was killed and the prosecutor slightly wounded, and Nos. 8 and 10 of knowingly receiving property obtained thereby, and recommend Nos. 5, 6, 7, 9, 11, 12, 13, 14, 15 and 16 to fourteen (14) years' imprisonment each, with labor in irons, and Nos. 8 and 10, to seven (7) years' imprisonment each, with labor in irons; and the reason I have not recommended a severer sentence in a case of dacoity attended with death is, that the party do not appear to have been armed with deadly weapons, as swords, spears, &c., or is it evident that it was intended to cause death; neither are the criminals old offenders."

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Remarks by the Nizamut Adawlut.—(Present: Sir R. Barlow, Bart., Messrs. A. J. M. Mills and R. H. Mytton.)—MR. R. H. MYTTON.—“The circumstance of the prosecutor having named, as recognized among the dacoits, one with whom he had a previous quarrel, has probably suggested to the magistrate the propriety of entering in the calendar other charges besides those of dacoity with murder and wounding, but the offence is clearly one of dacoity. It is very common for natives, especially those of the lower orders, to fancy that they recognize among dacoits those who they think owe them a grudge. In this instance there was more ground for such a supposition than usually exists in such cases, as Shorooop (No. 5) is a man of bad character and had used some threatening language to the prosecutor.

“The dacoity took place on the 11th of June. On the 13th June intelligence reached the thanna, but apparently from a suspicion that the case was not one of dacoity, the darogah only sent the jemadar to examine into the occurrence. He returned to the thanna on the 16th June with the deceased in a precarious state, when regular inquiries commenced; Shorooop being apprehended, denied; but on the 25th June, when about to be sent in to the magistrate, he named several of the prisoners under trial as having committed the crime, and stated that he could recover the plundered property through them. During this day and the next, the prisoners were apprehended, excepting Nos. 8 and 10, and admitting their guilt, gave up their respective shares of booty, being, with the exception of the ready-money and two or three trivial articles, every item of the property plundered from the prosecutor.

“One only of the prisoners, No. 13, repeated his confession before the magistrate, but those before the police bear upon them the stamp of truth. They are not, as it were, trumped-up to support a previously weak case; on the contrary, they in two essential points contradict the case as it stood. All the confessing prisoners state that Shorooop was not of the party, although an accessory before the fact, and that no ready-money was obtained. It is possible that the prosecutor may have

exaggerated in stating that rupees 60 cash was carried off, or that the sirdars may have concealed it from the others, as I observe that the dacoits did not, as is the practice in the neighbourhood of Calcutta, mutually search each other at the*first convenient spot.

" The Mofussil confessions have been well verified by neighbours of the prisoners themselves and proved to have been given voluntarily; and supported as they are by the production, by the prisoners themselves, or persons acting under their directions, of articles tallying so very nearly in description and weight with the list first given by the prosecutor, from places of concealment, I have no hesitation in concurring with the sessions judge in convicting of dacoity with murder and wounding, Nos. 6, 7, 9, 11, 12, 13, 14, 15 and 16, and of having in possession plundered property knowing it to be so, Nos. 8 and 10.

" The judge has given good reasons for disbelieving the evidence to recognition of Shorooop (No. 5). Persons known to the owner of the house to be robbed rarely go with the gang, and if they do, it is quite contrary to the practice of dacoits that those persons should go inside the house or any where near the *mussals*. Rejecting, therefore, the evidence of the eye-witnesses, there is no proof whatever of dacoity against No. 5, and I do not believe that he was of the party. His admissions hardly amount to confession of privy, and as he has given up the whole gang, he should not, in my opinion, be punished for this offence. I would acquit him of the offence charged and order his release. The sentences proposed by the sessions judge, against the other prisoners, whom he convicts of dacoity with murder and wounding, are inadequate. From their use of the slang term *kamasa* for a dacoit, from the different squads having their *rendezvous* in the *maidan*, and from the valuable part of the *booty* being made over to certain leaders to sell and distribute the proceeds, and from some of the prisoners having been repeatedly apprehended, I infer that this is an experienced gang of dacoits.

" The law declares that even those present, aiding and abetting in a dacoity attended with murder, *are to be adjudged to suffer death*, Clause 1, Section IV. Regulation LIII. of 1803.

" It is true this law has been little acted upon, but the continuing prevalence of dacoity with all its terrors and atrocities shows that lenity has been an error.

" In cases of dacoity with murder or other aggravating criminality, those who from confessions or other circumstances can be distinguished as leaders, should, in my opinion, suffer the extreme penalty of the law.

" From their own confessions and those of others, it appears that Birjo (No. 6) and Arradhun (No. 12) entered the prosecu-

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tor's house, and that they took the silver articles to dispose of. This is sufficient indication that they were lenders, and I would sentence them capitally. I would sentence Nos. 7, 9, 11, 13, 14, 15 and 16 to imprisonment for life, in transportation, and Nos. 8 and 10, to seven (7) years' imprisonment, with labor and irons."

P. S.—“The direct evidence of witnesses, Nos. 31, 32, 34 and 35, to the points to which they testified in the foudaree court, would have been more satisfactory than the secondary evidence taken by the sessions judge; but the admissions of the prisoners to the police, of the circumstances in point, do not render their testimony indispensable.”

SIR R. BARLOW, BART.—“It is quite clear that the prosecutor and his deceased brother Lukhun were at enmity with the prisoner No. 5, Shoroop Manjee, in consequence of their refusal to enter into a proposal of marriage made by the said prisoner. The prosecutor and his brother, who was killed by the party who attacked the house on the night of the 11th of June armed, by torch-light, have throughout named the prisoner as the leader, and the actual perpetrator of the murder which took place. Four eye-witnesses, who ran to the spot on hearing prosecutor's cries, have sworn before the magistrate and before the sessions judge, that they saw the prisoner No. 5 wound the deceased Lukhun with a sword. Prosecutor and his brother were examined by the police on the 12th and 13th June and swore to the prisoner: the eye-witnesses were not examined till the 17th idem, and then swore to the prisoner as being the man who cut down the deceased. This delay, it is to be feared, has been very detrimental to the development of the real facts of the case. There are certainly suspicious circumstances tending to inculpate the prisoner No. 5; his offer to assist in the production of the plundered property from the prisoners whom he named; his openly-avowed enmity with the prosecutor; his recognition by prosecutor and his brother, and the depositions of the eye-witnesses;—all these facts seem to indicate him as having taken the lead in the matter, and were I quite satisfied with the evidence, would, in my opinion, justify a sentence of capital punishment upon the prisoner as the murderer of the deceased. Nothing less would satisfy the demands of justice. But it would, I think, be dangerous to receive the evidence and act upon it as though true in all its parts. The sessions judge reasonably concludes that the prisoner would be the last man to attack the prosecutor without some disguise; all the others were disguised. The prosecutor would very easily be deceived into the belief that the prisoner, for the reasons already given, was at the bottom of the affair and himself took part; but the silence of the eye-witnesses at first is most unaccountable: the police

were on the spot and took the deceased Lukhun's deposition there: it was known to every one that a most serious dacoity was under investigation, and yet the eye-witnesses were not forthcoming and did not divulge their knowledge of the facts. Prisoner No. 5 is not charged with receipt of property or with privy. His offence, if he have committed one, is wilful murder; if that be not proved, he must be acquitted altogether. A little more tact and energy on the part of the police might have brought about a very different result; he must have the benefit of the doubts which the delay in the prosecution of the most material points in the inquiry at its earliest stages, created. I concur in his acquittal on these grounds: his having named some of the prisoners, after the information he received from his brother-in-law, No. 13, and thus aided in their apprehension, has no weight in my view of the case.

"I cannot concur in passing a capital sentence upon the prisoners Nos. 6 and 12, Birjo Chung and Sheikh Arradhun. They do not appear to have taken a more active part than the others in the dacoity. I would sentence Nos. 6, 7, 9, 11, 12, 13, 14, 15 and 16 to imprisonment for life, in transportation, as accomplices in dacoity with murder. The quarrel between the prisoner No. 5 and the prosecutor about the proposed marriage, does not alter the nature of the offence of which the prisoners are proved guilty: they attacked the house, killed Lukhun and plundered the prosecutor of all his property; no greater offence could be committed. I would convict Nos. 8 and 10 of receipt of plundered property, knowing it to be such, and sentence them as proposed to seven (7) years' imprisonment, with irons and labor."

MR. A. J. M. MILLS.—"This case is referred for a third voice in consequence of a difference of opinion as to the sentence which should be passed on the prisoners Nos. 6 and 12.

"Mr. Mytton would sentence them to suffer death on the ground that they were leaders of the gang. Sir Robert Barlow would sentence them to imprisonment for life, as they did not, in his judgment, appear to have taken a more active part than the others in the dacoity.

"I concur in the conviction of the prisoners.

"I am of opinion with Mr. Mytton, that the continued prevalence of dacoity attended with murder, calls on the court to enforce the provisions of Clause 1, Section IV. Regulation LIII. of 1803, against the leaders of gang-robberies, though not proved to be the actual murderers. But in this case both the confessions, as well as the circumstances of the case generally, point to the prisoner No. 5 as the planner and prime mover of the affair. It is stated in the confessions, that he is a *sirdar* dacoit, but does not always accompany the gang, and that on

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this occasion he assembled the gang and instigated them to attack the house of the prosecutor, to whom he owed a grudge.

"The prisoners Nos. 6 and 12 are not known as *sirdar* dacoits. One of them, No. 6, has never before been apprehended, and it does not appear from the confessions that they were more active and forward in the dacoity than the others; they are stated to have entered the house, but it is in evidence that others entered likewise. I do not, therefore, see sufficient grounds, especially as the principal and ring-leader has been acquitted, for passing a sentence of death upon the prisoners.

"In concurrence with Sir R. Barlow, I accordingly sentence the prisoners Nos. 6 and 12 to imprisonment for life, in transportation.

"My opinion is not called for as regards the other prisoners, Sir R. Barlow concurring with Mr. Mytton as to their guilt and sentence."

PRESENT:

SIR R. BARLOW, BART., *Judge.*

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versus

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One of the prisoners was convicted to the extent that his confession, the only evidence, told against him. The two others were acquitted for want of proof.

CRIME CHARGED.—1st count, Nos. 1 to 3, wilful murder of Fugger Chand; 2nd count, privity to the above murder; and 3rd count, Nos. 2 and 3, accessories after the fact.

Committing Officer, Mr. J. R. Muspratt, magistrate of Chittagong.

Tried before Mr. A. Forbes, officiating additional sessions judge of Chittagong, on the 8th September 1852.

Remarks by the officiating additional sessions judge.—"The law officer acquits the three prisoners; but I cannot concur in his verdict.

"Against a prisoner, No. 4, there is no evidence whatever. The prisoner was sent in by the order of the magistrate at the request of the darogah, who accused him of hushing up the real facts and of preventing witnesses giving evidence. The calendar shows that this prisoner was apprehended on the 19th May, and the record of the case shows that until after the 29th May, the police were endeavouring to convict a party of the murder, who have subsequently to that date been acquitted by the magistrate. It was only on the 29th May, ten days after prisoner No. 4 had been in confinement, that an anonymous petition pointed out prisoners Nos. 1, 2 and 3 as the parties who

committed the murder. If then the prisoner No. 4 at all interfered with the police, of which there is no evidence, the object of his interference would appear to have been to dissuade witnesses giving false evidence against innocent parties. I concur with the law officer in acquitting this prisoner.

"The admissions of the other prisoners, Nos. 1, 2 and 3, afford strong proof of guilt; and I cannot concur in their acquittal.

"In the course of Saturday, the 15th May, it was reported to the police that an unknown person had been found lying in a state of insensibility in a *bheel* in mouza Kundikiya. The spot where the body was found is close to, probably one hundred yards from, the houses of prisoners Nos. 1, 2 and 3. Who found the body I have been unable to ascertain; but Ashmut Alee, the chowkeedar of the village, reported the fact of the body of a wounded person having been found, to prisoner No. 4, and to witness No. 8, and to a person named Ramjoy; and these three persons proceeded to watch the body whilst the chowkeedar went to the thanna. Whilst they were watching, other people were attracted to the spot, and among others a witness, also named Ashmut Alee, the son of Muddo Mistry; and he first recognized the body as that of Fuqeer Chand. As life was not extinct, Fuqeer Chand was removed to his own house where he died the next day, Sunday, the 16th May.

"Witness No. 21, the sister of Fuqeer Chand, deposes, that Fuqeer Chand retired to rest with the other members of the house on the night of the 14th May; but when witness got up in the morning, she found that her brother had gone out during the night, and had fastened the street door on the outside.

"On the head of the deceased three wounds were found, two of which communicated with a very extensive fracture of the skull. Other marks were found on his body as if he had been engaged in a severe contest.

"The police, instead of directing their inquiries to houses near the place where the body was found, endeavoured to trace the murderers by raking up old quarrels, and on the grounds of the deceased once having had a difference with a person named Bipro Doss, and of a person named Muddun having been in company with the deceased on the early part of the night of the 14th May, the police endeavoured to make evidence to ensure the conviction of these two persons of murder.

"These persons were apprehended on the 22nd May, were sent to the magistrate on the 23rd May, and were released by the magistrate on the 23rd July. As the accusation of this party of the crime forms part of the defence of the prisoners whose trial forms the subject of this report, it is necessary to refer to the evidence by which the accusation against Bipro Doss and Muddun was supported.

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" Witnesses Nos. 22, 23, 24, 25 and 26 positively depose that they severally (no two of them being in company) at five different times in the course of Saturday, the 15th May, saw the body of Fuqeer Chand lying in the *dhool*, bleeding and unable to move; and they severally depose that they were told by Fuqeer Chand that Bipro Doss had wounded him. Not one of them asked for any information, nor received any information, whereby the two individuals named could be identified. They all depose that they did not know who the wounded man was. But only one of the five says, that he asked the wounded man who he was, and though the wounded man named the parties who had wounded him, he yet deliberately and distinctly refused to give his own name to this witness. Not one of them gave the least assistance to the wounded man. Nos. 22 and 23 state, that they told the chowkeedar, and No. 25 says, he went for the chowkeedar, but heard that he had gone to the thanna. As, however, the chowkeedar before leaving for the thanna set people to watch the body, it is not easy to reconcile the statement of this witness with this fact.

" Witnesses Nos. 22 and 23 depose, that they went alone (each separately not in company) to the chowkeedar, whom they found at his (the chowkeedar's) own house. They both state that the chowkeedar made no observation whatever when they informed him of having found a wounded man.

" Witness No. 22 deposes, that when he reported to the chowkeedar, witness No. 23 was standing close by. No. 23 deposes, that he never saw witness No. 22 on the day in question. Neither of these witnesses told the chowkeedar that the wounded man had named the persons who had wounded him; and it is certain that the chowkeedar did not report this important fact to the police.

" The chowkeedar deposes that he went for some reason to the house first of witness No. 22, who then and there told him of finding the wounded man. The chowkeedar says that he then went to the house of witness No. 23, who then and there gave the same information.

" There is nothing in the record of the case, nor is there any evidence to show that these five witnesses, Nos. 22 to 26, ever mentioned to a single soul that the deceased had mentioned the names of his murderers to them. In fact, though from the 15th May to 22nd May, numerous reports on the most trivial subjects connected with this case were forwarded to the magistrate, no mention is made of witnesses Nos. 22 to 26. We find their names and the nature of their evidence all at once inserted in the *sooruthal* of the 23rd May.

" I consider it wholly incredible that five men, influenced by any angry or corrupt feeling, holding no communication with

one another, could be so totally devoid of all human feeling as to leave a wounded and dying man in a *wheel* to perish without rendering him any assistance or calling others to his assistance; that they should all yet wait to ask the man the names of his murderers, and not ask him his own name; and having learnt the names of the murderers, they should yet fail to elicit sufficient information to enable them to identify the persons named by the dying man. Add to this the long unaccountable silence of these men, and the impossibility of reconciling the discrepancy between the statements of three of them and the statement of the chowkeedar, I can come to no other conclusion than that the evidence of these five witnesses is altogether false.

"After Bipro Doss and Muddun had been sent in by the police on the charge of murdering Fuqeer Chand, an anonymous petition found its way to the magistrate on the 29th May, accusing the prisoners Nos. 1, 2 and 3 of the murder of Fuqeer Chand. The magistrate sent the town darogah to inquire into the truth of the petition, and the accused confessed to the darogah that they had wounded the deceased. The darogah, however, did nothing beyond taking the confessions of the prisoners.

"Where the sympathy of the neighbours is with the murderers, as it frequently will be when they think that the murder was committed purely in vindication of the honor of their neighbour's house, great difficulty will attend the collecting of evidence. This may have been the case in this instance. But when I find that the police have made no exertion to trace the parties who found the body, or who, on its being found, went to watch it, or the party who recognized the body, I cannot but attribute extreme remissness to them.

"By accident a witness, No. 8, was made a witness to the confession of the prisoner No. 2, and he threw some light on these important points.

"From his evidence I have no doubt that the chowkeedar did from some source learn that the body of a wounded man was lying in the village; and that witness No. 8, with prisoner No. 4 and a third person, went to watch the body whilst the chowkeedar went to the thanna.

"The evidence against the prisoners Nos. 1, 2 and 3 is confined exclusively to their confessions, either to the police darogah, or to the magistrate, and to the admissions they have made on their trial. The admissions would, if their story were probable and consistent and if the extenuating circumstances were corroborated by evidence, entitle them to an acquittal. Unfortunately, however, their story is so very improbable, and, as far as all extenuating circumstances are concerned, is so totally uncorroborated by evidence, and their conduct has been

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attended with such complete concealment, that I convict them of murder of the deceased on their own confessions.

" Their story is, that the walls of the house of prisoner No. 1 had been injured by a storm; that a dog thus entered his house in the evening of the 14th May, and destroyed his food, and he sat up for a considerable part of the night with a *ddo* in his hand with the intention of killing the dog if he again came to his house. Whilst he was thus watching, the deceased made a *scind* in the foundation of the walls of his house (the upper part of the walls being made of bamboo mat) and entered his house with the intention of stealing; when he, prisoner No. 1, mistaking the deceased for the dog, struck him a blow on the head with a *ddo* with all his might. Not hearing the dog cry, he concluded that he had struck a man, and he called up prisoners Nos. 2 and 3, that they found the deceased, Fuqeer Chand, standing by the enclosure of the house, and they recognized their relation, Fuqeer Chand, as the thief, who then confessed that he had come with the intention of stealing, in company with Parbutty Churn, Bipro Doss, and Muddun, who had run away; that the prisoners Nos. 1, 2 and 3, after some conversation, forgave Fuqeer Chand, and allowed him to go away. They excuse themselves for not communicating what had occurred to the police when the body of Fuqeer Chand was found the next day, by saying that on the night in question they observed only a slight wound on his head, and that they heard, when his body was found the next day, that several wounds were found on it, and that the persons, who were in company with the deceased when he came to rob their house, had been taken up on suspicion.

" People do not sit up all night with *ddos* in their hand waiting for dogs to come and be killed. If, however, a person were so watching, he must have heard the thief making the *scind*. A blow inflicted on the head of a man with a heavy iron *ddo*, with force intended to kill a dog, would instantly stun him, and it is impossible that a man having received such a blow could have been able immediately to get up and move away for however short a distance, and have then carried on a conversation and have finally walked away. There is no evidence to show that the deceased left his house in company with Furbutty Churn, Bipro Doss and Muddun on the night of the 14th May. The two latter were not apprehended by the police before the 22nd May. Neither the sister nor other relations of the deceased accused or suspected those two persons. Thus the reason they give for not mentioning the fact of the deceased having come to the house of prisoner No. 1, so soon as they heard of the finding of the body of the deceased in the *bheel* on the 15th May, is false. When a burglar is caught in the act, he is not usually, and as a matter of course, let go. When burglars go out to rob, and one of the party is caught, the rest usually endeavour to

secure their safety by flight. But to reconcile the story in this case with truth, we must suppose that the rest of the party calculated on their accomplice being released immediately; and waylaid him close to the house in which he was caught, and murdered him without any conceivable cause.

"The witnesses Nos. 13, 14, 16 and 17 are the female relations of prisoners Nos. 1, 2 and 3, and witness No. 15 is the son of witness No. 14. They were in the houses of the prisoners on the night in question, and they give evidence for the defence rather than for the prosecution. They depose to seeing the deceased near the house of prisoner No. 1. They state that his head was bleeding, and that he begged for forgiveness. They also depose to seeing the *scind*. Not one of them saw the deceased leave the house.

"I attach no credit to the evidence of witnesses Nos. 13 to 17. It is impossible that the deceased could have walked and talked immediately after receiving so severe a blow; and it is very improbable that all the females of the family would have ventured out of their houses on a dark and stormy night to look at thieves. Women, on hearing the alarm of thieves, usually conceal themselves and their children in the nearest jungle.

"That the fact of the deceased having been killed by the prisoners Nos. 1, 2 and 3, may have been known to many in the village, and that it may have oozed out by the females of the family talking or quarrelling, is very probable; but I attach little weight to the evidence of the witnesses Nos. 18 and 20. They did not communicate what they had heard till long after the occurrence, and long after the presentation of the anonymous petition to the magistrate.

"Witness No. 19 deposes, that he heard a noise at the house of prisoner No. 1, during the night of the 14th May, and on going to see what was the matter, he saw a corpse lying near the house. He says he told no one of this, because the three prisoners threatened him the next day. As he failed to communicate what he had seen to any one for upwards of a fortnight, although the wounded man was found close to the prisoners' house the next day, and although two inquiries had been instituted by the police during that fortnight, I can attach no weight whatever to his evidence.

"The prisoner No. 1 admits that he struck the deceased a mortal blow with a *dho*. The two prisoners, Nos. 2 and 3, admit that they saw the deceased at the house of prisoner No. 1, on the night of the 14th May, and that he was there wounded. It is proved by the evidence of witnesses Nos. 8, 27 and 28, and Ashmut Alee, son of Muddo Mistry, that towards the afternoon of the 15th May, the deceased was found in the *bheel* at a short distance from the houses of the prisoners, Nos. 1, 2 and 3, in a senseless and dying state. And the deceased has never

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been seen in company with any other person, or by any other person subsequently to his being wounded by prisoner No. 1, and previous to his being found in the *bheel*.

"The prisoners have adduced no evidence to justify the wounding of the deceased, nor have they advanced any probable or reasonable plea to extenuate their crime. I therefore convict prisoner No. 1, on his own confession, of the culpable homicide of Fuqeer Chand; and I convict prisoners Nos. 2 and 3 of being accessaries after the act to the culpable homicide of Fuqeer Chand.

"There can, however, be little doubt that the deceased went to the house of one of the prisoners in the midst of the night, if not for some improper purpose, at least under very suspicious circumstances. I would allow the prisoners the full benefit of this circumstance; and would sentence them all to fourteen (14) years' imprisonment, in banishment, with labor in irons."

Remarks by the Nizamut Adawlut.—(Present: Sir R. Barlow, Bart.)—"Taking the several confessions of the prisoners as the only evidence of their guilt on the record, I convict the prisoner No. 1 of homicide. His story is an improbable story, but so far as the prisoner is concerned, there is no other to controvert it. There is much room for suspicion no doubt; but it would not be safe to convict on the graver charge without some clear and satisfactory data upon which to found a judgment. The prisoner might, prepared as he was, with a very little precaution, have discovered that a man was entering the house and adopted means for his apprehension in the act. His account of the transaction must be accepted in the absence of any other. This view of the case takes away the *gravamen* of the charge, and renders the prisoner liable to a mitigated sentence. The deceased no doubt went to the prisoner's house for no good purpose, and there received the wounds which proved fatal to him. Upon examination, it appeared that a hole had been dug in the wall, and it is just possible that the prisoner was deceived into the belief that the dog, for the return of which he had been watching, had again entered his house. Under the circumstances a sentence of twelve (12) months' imprisonment without labor, appears sufficient upon the prisoner No. 1. There is nothing to prove any crime against the prisoners Nos. 2 and 3, further than that they went out and having seen what had occurred, took no steps to relieve the deceased, who after he was wounded walked away of himself, and seems to have perished in the *bheel* near the spot. I acquit these prisoners; they must be released. The case is one of great difficulty and no medium course can be pursued; there are not sufficiently clear proofs for extreme punishment, and the prisoners must have the benefit of the doubt."

PRESENT:

W. B. JACKSON, Esq., *Judge*.

NEWANEE MUNDUL

versus.

ONOOOP KAMAR (No. 16, APPELLANT,) AND BHYRUB
GORAIN (No. 18).

CRIME CHARGED.—1st count, No. 16, dacoity in the house of the prosecutor, and plundering therefrom property valued at rupees 40-11-6; 2nd count, accomplices in the said crime of dacoity; 3rd count, accessory to the said dacoity before and after the fact; 4th count, No. 18, knowingly receiving and retaining stolen property obtained by the said dacoity; and 5th count, privy to the concealment of the aforesaid crime of dacoity.

CRIME ESTABLISHED.—No. 16, accessory to dacoity before and after the fact, and No. 18, knowingly having in possession property obtained by dacoity.

Committing Officer, G. C. S. Chapman, deputy magistrate of Deoghur, Beerbhoom.

Tried before Mr. R. B. Garrett, officiating sessions judge of Beerbhoom, on the 19th August 1852.

Remarks by the officiating sessions judge.—“The prosecutor’s house was attacked by a gang of fifteen or sixteen dacoits, on the night of the 15th May last; and plundered of property valued at rupees 40-11-6.

“Eight* persons have been sent up to this court for trial. In the possession of several of them were found certain trifling articles claimed by the prosecutor and identified by his witnesses; but the evidence to the finding the property and to its identification, is so unsatisfactory that I cannot trust it. The two prisoners, Onoop Kamar and Bhyrub Gorain, confessed both before the darogah and the deputy magistrate, and acknowledged their foudaree confessions in this court. I have, therefore, no hesitation in convicting them, the former of being an accessory to dacoity before and after the fact, and the latter of knowingly having in possession property obtained by dacoity; and sentence Onoop Kamar, who is also convicted of burglary and theft in the following case No. 4,† to seven (7) years’ imprisonment, and Bhyrub Gorain to four (4) years’ imprisonment, with labor in irons.”

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and another.

Sentence af-
firmed on re-
jection of ap-
peal.

* Of these, six were acquitted by the lower court.

† See case of Sooful Kamar and others, Nizamut Reports for October 1852, p. 643.

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Case of
ONOO KAMAR
(appellant)
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Remarks by the Nizamut Adawlut.—(Present: Mr. W. B. Jackson.)—"It is in evidence that the prisoner Onoop twice confessed to circumstances which are sufficient to constitute him an accessory to the dacoity in question before the fact; there is nothing to set against these confessions. I therefore see no reason to interfere with the sentence of the sessions judge."

PRESENT :

SIR R. BARLOW, BART., *Judge.*R. H. MYTTON, Esq., *Officiating Judge.*

GOVERNMENT

versus

SHAGUR MUNDUL (No. 18), NUSHYE MUNDUL (No. 19), KALACHAND MUNDUL (No. 20)* AND SONATUN MUNDUL (No. 21).*

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Case of
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In a case of murder by strangulation and subsequent suspension of the bodies, the question of whether marks round the neck can be produced after death considered. Ditto as to acceptance of confessions obtained by police, five days after apprehension. Sentence, death.

CRIME CHARGED.—Wilful murder of Nubye Byragee and Musst. Ram Sona.

Committing Officer, Mr. W. M. Beaufort, magistrate of Backergunge.

Tried before Mr. A. S. Annand, officiating sessions judge of Backergunge, on the 30th September 1852.

Remarks by the officiating sessions judge—"The Government is prosecutor in this case.

"Prisoner No. 18, Shagur Mundul, confessed at the thanna and before the magistrate, that he and prisoners Nos. 19, 20 and 21 killed Nubye Byragee and Musst. Ram Sona by pressing a bamboo against their throats; that they first killed Nubye Byragee, and then brought Ram Sona out of the house and put an end to her in the same manner; that they did it because Nubye had had an illicit connexion with his sister, Musst. Puncha, who had been pregnant by him, and because he, Nubye, and Ram Sona had given her medicine to cause abortion, and published her disgrace generally; that he had given Ram Sona and Molook Chand Byragee, a *matbur* of the village, rupees 2 each to say nothing about it, but notwithstanding this she persevered in doing so; that the deceased, Nubye Byragee, had an intimacy also with Ram Sona, and that they seized him in her house and killed him there; that he could not make any noise and that when he was being killed, Ram Sona called out '*agoo ho, agoo ho,*' for which reason they killed her afterwards in the same manner; that having despatched both they hung their bodies upon the mangoe tree, where they were found the

* Acquitted by the lower court.

next morning, that it might be thought that they had hanged themselves; that there was nobody in Ram Sona's house at the time beside her and Nubye and the two girls, Anupdee and Chundnee, who were asleep; that he and prisoner No. 20 seized Nubye Byragee, threw him down, placed a bamboo across his throat, and pressed it down with their feet on each side until he died, prisoner No. 19 holding down the feet and legs, and prisoner No. 21 holding down his head by the hair; that afterwards they killed Ram Sona in the same way; that when they were suspending Ram Sona, her *saree* fell off, and he saw a purse at her waist, which he took off, and finding eight rupees in it gave three to No. 19, one to each of the others, and kept three himself and the purse, which he afterwards burnt. Prisoner No. 19, Nushye Mundul, a cousin of the above, confesses his participation in this double murder as fully and with little variation in detail, both at the thanna and before the magistrate. Prisoners Nos. 20 and 21, who are connexions of Nos. 18 and 19, confessed also at the thanna, but denied all knowledge of the case before the magistrate.

"The evidence of the two girls, who were living in the house of Ram Sona, proves that Madhoo Mundul, the husband of Ram Sona, was away from home on the night of the murder, having gone some days previously to cut rice at Ghose Cattie, and that on the evening of that day the deceased, Nubye Byragee, who has long had an illicit connexion with Musst. Ram Sona, came to her house and remained smoking and talking to her until they went into another room to prepare their food; that after eating it they came out and asked Ram Sona to let them sleep under her musquito curtains with her on that night, as the musquitos were very troublesome, but that she refused, when they retired to their own room, and though they did not, they say, see Nubye with her then, there can be no doubt that he was somewhere near, and that he slept with Ram Sona. In the middle of the night these two girls, lying in the next room to Ram Sona and her paramour, heard a noise as if there were four or five men in the house, and Ram Sona cried out '*bapra! maris na.*' They were much alarmed and remained in their room, which was only divided by a *tattie* from that of the deceased. On going out the next morning they found that Ram Sona was not in the house, and proceeding to the ghât of their tank to wash their hands and faces, they saw the bodies of Nubye Byragee and Musst. Ram Sona suspended by ropes from the branches of a mangoe tree, the feet of the latter resting on the ground, whilst those of the man were raised above it; that they then went to the houses of prisoners Nos. 18 and 19, who lived close by, to give them intelligence, and that they threatened to kill them if they mentioned it; that it was notorious that Nubye Byragee

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had had an illicit connexion with Musst. Puncha, *alias* Khoody, the sister of the prisoner No. 18; that she had been pregnant by him, and that he and Ram Sona had given her medicine and procured abortion, and that the prisoners Nos. 18 and 19 bore great enmity to Nubye Byragee and Ram Sona in consequence. Witness No. 11, Puncha, who lives in the house of her brother, prisoner No. 18, within a few *haths* of Ram Sona's house, deposes to having heard a noise there on the night in question, and the voice of Ram Sona, who cried out '*bapra! agoo ho,*' and in the magistrate's court she allowed that she had been pregnant by Nubye Byragee, and that the child had been destroyed by medicine given to her by him, which he had got from Ram Sona, and that she nearly died from its effects; in consequence of which her brother, prisoner No. 18, and her cousin No. 19, had threatened to punish Nubye, who had left the village from fear of them, but returned again after some time. Witness No. 18 confirms the above and adds that on the night of the murder, prisoner No. 18 came to her house about 12 o'clock, and her husband, prisoner No. 19, went out with him and returned about four *ghurries* after, very wet, and went to sleep; that after he had gone out she heard a cry from the house of the deceased Ram Sona, which is only fifteen *haths* from her own. Witness No. 13, Bholanath, was sleeping in the house of prisoner No. 18, and about 12 o'clock he heard an unusual noise in the house of Ram Sona, and at that time the said prisoner was not in his own house; that about 8 o'clock on the night in question, the prisoners Nos. 20 and 21 had come to the house of No. 18, and talked with him; but he cannot say whether they were there or not when he went to sleep. It will have been observed that this is the first mention made of prisoners Nos. 20 and 21, except in the confessions of the other prisoners, and besides their *thanna* confessions and relationship to the prisoners Nos. 18 and 19, it is the only evidence at all against them. The deposition of the civil assistant surgeon could not be taken in my court, owing to his absence on leave; but he has stated before the magistrate that he examined the bodies, and that there was a mark on the neck of each, and a protrusion of the tongue as if death had been caused by strangulation; but he is of opinion that they were suspended before life was quite extinct. If it was so the woman must have been too far gone to rally, as her feet were on the ground when the body was found in the morning.

"One of the jury found prisoners Nos. 18 and 19, guilty of the wilful murder of Nubye and Ram Sona, and Nos. 20 and 21 of aiding and abetting in the same. The other two jurymen agreed in the verdict against Nos. 18 and 19, but acquitted Nos. 20 and 21; and in this last opinion I concur. If it had not

been for the confessions of two of the prisoners before the magistrate, no satisfactory proof would, I fear, have been obtained in this case; but their confessions, coupled with the circumstantial evidence that has been adduced, bring this double murder clearly home to Shagur Mundul (No. 18) and Nushye Mundul (No. 19) and I recommend that they should both suffer the extreme penalty of the law. Though there is strong reason to believe that the prisoners Kalachand Mundul (No. 20) and Sonatun Mundul (No. 21) were accomplices in this atrocious crime, there is not sufficient proof to convict them, the whole resting on their thanna confessions, and the evidence of a single witness, Bholanath, who stated that they came to the house of prisoner No. 18 on the night of the occurrence; and they have been released accordingly."

Remarks by the Nizamut Adawlut.—(Present: Sir R. Barlow, Bart., and Mr. R. H. Mytton.)—MR. R. H. MYTTON.—"The main proof against the prisoners, respecting whom the judge has made a reference, is their Mofussil and foudaree confessions, and as they originally denied and the darogah did not obtain any admission from them until five days after they were taken into custody, it is necessary to scrutinize the circumstances under which they were obtained most narrowly. With this view I have carefully gone through all the thanna papers."

"The darogah arrived on the spot on the 11th, and on that day held an inquest, sent in the bodies for examination by the surgeon and reported that as yet the circumstances under which the deceased met their death was not apparent. At this early stage, however, he prominently noticed the fact of the woman's feet touching the earth and her legs being bent or doubled in consequence."

"On the 12th, two inmates of the house of the deceased woman detail the circumstances of the deceased Nubye's double intrigue, of his running away and staying some time at a distant village in consequence, and they mentioned that during his absence Shagur and Nushye, the two prisoners, said that they would beat him if they caught him. On the night in question, one of them heard dogs bark, and as it were the voice of a man, but she did not awake fully. This led to the apprehension of the prisoners, but they denied all knowledge of the matter."

"On the 13th the darogah reported that he could not collect the people in consequence of the heavy rain."

"On the 14th, Gorachand, a brother of the prisoner Shagur, who had had a criminal intimacy with the deceased Ram Sona formerly, informed the darogah that she used to wear a purse and that he observed that it was not on her waist when the bodies were taken down."

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" On the 15th Khoody, *alias* Puncha, the sister of prisoner Shagur, admitted her having become pregnant by Nubye and his having caused her abortion by medicine, and stated that in consequence of this and Ram Sona's spreading the scandal, she suspected that Shagur and Nushye had murdered the deceased, that they had laid a plan previously to charge him with stealing fruit.

" She further stated that on the night in question she was awoke by a kick from her aunt, who said she heard Ram Sona crying out. Bholanath suggested that it might be Nushye's wife, but the aunt said no it was Ram Sona's voice. The aunt called Shagur but got no answer. Balok, a brother of Shagur, on the same day, deposed to the prisoners having conspired to beat the deceased Nubye.

" On the 16th the aunt above alluded to (Gour Money) deposed to the same effect, and further that on the night in question Shagur eat no dinner and went to sleep in the verandah. She heard Ram Sona cry out, and called Shagur but got no answer. The next day Shagur, while eating his meal, told her to take three rupees out of a loop tied in his cloth which she did, Dhonmony, the wife of Shagur, corroborated this evidence, and the inmates of Nushye's house began to speak out.

" His mother, Koomy, first stated, that her son had a spite against the deceased; that she heard a cry on the night in question and that Lalehand, who was sleeping in the house, called her attention to it; that she heard from Nushye's wife that Shagur had called him away that night.

" Nushye's wife corroborated this deposition and further stated that her husband returned home *wet*.*

" Bholanath, a relation of Shagur, deposed, that on the night in question the prisoners, acquitted by the sessions judge, came to their house and after taking a smoke went away with Shagur. He corroborates the previous evidence regarding the cry, and the aunt's persisting in saying it was the deceased Ram Sona's voice.

" On the following day, *viz.*, the 17th July, the prisoners Shagur and Nushye confessed, implicating Kalachand and Sonatun, named by the witness Bholanath, and Shagur gave up the three rupees which he obtained from the purse of the deceased woman.

" On the 18th, the last two accused men were apprehended and fully confessed their complicity. From the foregoing narrative it will be seen that a net of circumstantial evidence was gradually wove round the prisoners, which might, even if obtained from unconnected parties, have impelled them to make

* The bodies were found hanging over some water.

a clear breast, but was more likely to have that effect, coming as it did from near relations. The number of days consumed in obtaining the evidence is easily accounted for by the fact of the witnesses being all relatives of the accused, and consequently unwilling witnesses. Indeed, the darogah deserves very great credit for the patience and perseverance he has displayed. The evidence is very natural, and has no appearance of being made up or distorted, and I see no reason to suspect the confessions being obtained by other than legitimate means.

"It is to be observed that both Shagur and Nushye give accounts of the part they took in the murders to the magistrate, differing from that they gave to the darogah. To the darogah they said that Shagur and Nushye squeezed the bamboo across the neck of the man, and Sonatun and Kalachand across that of the woman. To the magistrate they said that Shagur and Kaloo strangled the man and Nushye and Sonatun the woman. It is remarkable also that threats should have succeeded in silencing the woman Ram Sona, as they say, while they were murdering her paramour. It is not explained how the party discovered that the deceased Nushye was at Ram Sona's on the night in question until they arrived at the house, but no pointed inquiry on this subject appears to have been made by the darogah or the magistrate. As regards the first point, I think it very possible that the murderers should not exactly recollect what part they took in such an affair, the horrid excitement of which was enough to unhinge any ordinary mind. The second fact noticed is an astonishing one, but it is not impossible. The last might very probably have been explained.

"For these reasons I do not think that there is ground for rejecting the explicit admission of participation in the crime in the confessions, corroborated as they are by the circumstantial evidence adduced. The acquittal of Kalachand and Sonatun was in my opinion a measure of very questionable propriety. The evidence of Bholanath against them was obtained before the confessions of the other two prisoners revealed their complicity. The evidence of the surgeon, who examined the bodies, could not be obtained at the trial, and that taken by the magistrate has not been brought on the record according to Circular Order No. 42, of volume III. Judging from that deposition, however, his evidence would not have been of much importance. The circumstances of the case were not known at the time of his examining the bodies, and therefore his scrutiny received no pointed direction. What he has stated to the magistrate respecting the existence of a mark all round the neck of each body, and his opinion that they were caused before life was extinct, however, deserves notice, for if correct, it would belie the con-

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fessions. Taylor in his work on Medical Jurisprudence, page 527, states, that ecchymosed marks may be produced on the neck of a dead body suspended soon after death, and he quotes Muzdorff as asserting that it would be in the highest degree difficult, if not impossible, to determine medically by an inspection of the body whether a man had been hanged while living, or whether he had been first suffocated and hanged up immediately after death.

“ Beck on the same subject, page 628, states that the ecchymosed mark is a decided proof of suspension during life, at the same time quotes Orfila as unequivocally stating that in twelve experiments on the dead body, some immediately after death, some after 6, 8 and 18 hours, the depression made by the cord and the skin under it as well as the subcutaneous cellular tissue presented precisely the same appearances as they do from suspension before death.

“ From this I infer that the appearance noticed all round the neck is not inconsistent with the statements of the prisoners to the darogah and magistrate, that they strangled the deceased with a bamboo first and then suspended them. The officiating sessions judge has not noticed the defence of the prisoners at the sessions; it is an *alibi*, but the witnesses cited in support thereof did not support it. I therefore think that the prisoners Shagur and Nushye have been properly convicted, and as the murder was deliberate, I concur with the sessions judge in deeming a sentence of death appropriate.”

SIR R. BARLOW, BART.—“ The prisoners, when first apprehended, denied their guilt and were put on bail. Further inquiry, however, elicited information upon which the police felt themselves justified on acting. It was shown that the prisoners Shagur and Nushye had threatened to punish the deceased Nubye in consequence of his intimacy with Khoody, Nubye's sister. The wife of Nushye stated her husband had been called away by Shagur on the night of the murder and returned after some time with his clothes wet. Nubye had also formed an intimacy with Ram Sona, who spread the report of his having administered some drugs to Khoody to produce abortion. The prisoners having ascertained that Nubye had gone to Ram Sona's house, took the opportunity of murdering him, as fully detailed in their confessions before the police and before the magistrate, with the assistance of Kalachand and Sonatun, who, I observe, have been released by the sessions judge. Ram Sona from within the house remonstrated, when it was resolved that she too must be murdered; upon which one of the party returned to the house, brought her out, and she was in like manner strangled with a bamboo placed on her throat, upon the ends of which two men stood and compressed them.

"The bodies were then hung upon a tree, and it was reported that Nubye and Ram Sona had hung themselves; the purse of the latter was found on the corpse and destroyed by Shagur, after the eight rupees it contained had been divided amongst the party. The confessions of the prisoners in the foudaree court were made two days after their confessions before the police; they are duly verified by the subscribing witnesses, but they do not form the only evidence; the circumstantial evidence also strongly corroborates the truth of the prisoners' statements and supports the charge preferred against them. I see nothing on the record which would justify a mitigated sentence upon the prisoners: in concurrence, therefore, with Mr. Mytton, I am of opinion that they should undergo the extreme penalty of the law."

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PRESENT:

SIR R. BARLOW, BART., *Judge.*

TRIAL No. 2.—RAMANUND TELEE

versus

MADHIE ROY CHOWKEEDAR (No. 20), HURI ROY
TABEDAR GHATWAL (No. 21) AND GUDDIE MUN-
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TRIAL No. 3.—CHEEDAM NAIK

versus

MADHIE ROY CHOWKEEDAR (No. 23), HURI ROY
TABEDAR GHATWAL (No. 24) AND GUDDIE MUN-
DUL (No. 25).

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CRIME CHARGED.—TRIAL No. 2.—1st count, Nos. 20 and 21, dacoity in the house of the prosecutor and plundering therefrom property valued at rupees 26-9-6, on the night of the 22nd March 1852, corresponding with the 10th Cheyt 1258 B. S.; 2nd count, Nos. 20 and 22, knowingly receiving and having in his possession property acquired in the said dacoity.

CRIME ESTABLISHED.—Nos. 20 and 21, dacoity in the house of the prosecutor, and plundering therefrom property valued at rupees 26-9-6; and No. 22, knowingly receiving and having in his possession property acquired in the above dacoity.

CRIME CHARGED.—TRIAL No. 3.—1st count, Nos. 23 and 24, dacoity in the house of the prosecutor and plundering therefrom property valued at rupees 16-9-5, on the night of the 10th March 1852, corresponding with 28th Phagoon 1258 B. S.; and 2nd count, No. 25, knowingly receiving and having in his possession property acquired in the said dacoity.

Two of the
prisoners
were acquit-
ted on appeal
for want of
proof against
them, notwith-
standing the
weakness of
their defence.
Conviction
and sentence
upon the third
prisoner af-
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CRIME ESTABLISHED.—Nos. 23 and 24, dacoity in the house of the prosecutor, and plundering therefrom property valued at rupees 16-9-5, and No. 25, knowingly receiving and having in his possession property acquired in the above dacoity.

Committing Officer, Mr. W. J. Longmore, officiating joint Magistrate of West Burdwan.

Tried before Mr. P. Taylor, sessions judge of West Burdwan, on the 24th August 1852.

Remarks by the sessions judge.—**TRIAL NO. 2.**—"Nobody witnessed this dacoity but the prosecutor and his wife, the former of whom, when the house was attacked by the robbers, got over a party wall, at the end of the room in which he was, and was thus able to watch their proceedings unperceived, while he stood upon a chopper below it. His wife admitted the robbers, seven of whom he recognized by the light of some dry sugar-cane stalks which they had found in his verandah and set on fire. Some of them had their faces blackened, and swords and *luttees* were in their hands, but no violence of any kind was committed. The village ghatwal, who was on his beat, was obliged to fly, but gave immediate notice at his ghat, in consequence of which the other ghatwals and tabedars thereof came up, but too late to intercept the robbers. Two of them remained to protect the prosecutor from further attack, and two others pursued the dacoits. Next morning traces of footsteps were found, which were followed up by the ghatwals, as far as a spot near Gohaltole, a village about half a mile from prosecutor's house, in which the prisoners, whom he had recognized, resided. At 9 o'clock on that day, the *mohurir* of the thanna arrived, and after making the usual inquest and taking a deposition and list from the prosecutor, proceeded to Gohaltole, where he apprehended the persons whom the prosecutors had recognized, and searched their houses, but without result. Nothing was done the next day (12th Cheyt), but on the 13th, Seeboo Ghatwal (witness No. 9) came from the Audheria Ghat, with a letter from Muggun Bannerjee, the sirdar thereof, in which it was stated that the said Seeboo had seen the prisoners Nos. 20 and 21 holding counsel with certain suspicious characters in Amurpore, a village one and a quarter *coss* distant from the prosecutor's house, and thereafter visiting the house of prisoner No. 22; that he consequently suspected prisoners Nos. 20 and 21 of having committed the robbery, and prisoner No. 22 of being the fence, in whose house the stolen property was placed, and advised the *mohurir* to apprehend the former, and search the house of the latter without delay. The *mohurir*, prosecutor, ghatwal, &c., thereupon immediately adjourned to Amurpore, and went, in the first instance, to the house of prisoner No. 22. That individual at first objected to search being made

until his mahajun could be present, but the mohurir would hear of no delay and proceeded to do the needful at once. The proceeds of search were two *poorahs*, or straw rope receptacles, full of paddy, fourteen brass vessels, and a quantity of *goor*. The most trustworthy of the witnesses say, that the prisoner No. 22, at once declared the *goor* to be the property of his mahajun, and the paddy and brass vessels his own. The latter had been found hidden under the planks of a grain moorye by Ramnarain Burkundauz, witness No. 1. Three of them were immediately claimed by the prosecutor, and four more by Cheedam Naik (witness No. 2, and prosecutor in the next case on the file, Q. V.).

"The *posse comitatus* next proceeded to the houses of prisoners Nos. 20 and 21, and the mohurir, seeing that they were surrounded by low jungle, ordered the latter to be searched first, when a quantity of the property, enumerated in the prosecutor's original list, was discovered. The search commenced late in the day, and so much time was taken up by it, that the houses were not searched until next morning, when only a small quantity of mustard seed was found in that of prisoner No. 20. The answers of all three prisoners were subsequently taken, when No. 22 stated, that the other two prisoners had placed ten brass vessels in his house in the presence of Kartick Mundul and Gooroochurn Day (witnesses Nos. 29 and 30 for the defence) and one Kali Roy (who, it appears, accompanied the said prisoners) on the 10th or 11th Cheyt, on pretence of their being afraid they would be stolen from their houses, while they were on duty as police officers. Prisoners Nos. 20 and 21, on the other hand, denied having done so, or having obtained the property in question by dacoity.

"The apprehension of the prisoners, the *sooruthal* and the discovery and recognition of the property, were all sufficiently proven. The latter was all mentioned in the original list furnished by the prosecutor; and I saw no reason to doubt the actuality of the recognition, except in the case of the paddy found in the house of prisoner No. 22. This, consisting of two sorts, *viz.*, *noona*, and *pauch missalee*, or five kinds mixed, was sworn to by some of the prosecutor's witnesses, but the evidence adduced in favor of its being the property of the prisoner aforesaid, was equally strong.

"The evidence against the prisoners Nos. 20 and 21 was as follows:

First,—"That of Seeboo Ghatwal (witness No. 9). This individual, when directed by the sirdar of his ghaut, to search for the persons who had robbed the prosecutor, immediately suspected prisoners Nos. 20 and 21 of having done so, because he had seen *budmashes* visiting them a short time before.

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Excited by this suspicion he went immediately to their village of Amurpore, where he saw what was subsequently detailed in the note forwarded to the mohurir by the sirdar Muggun Bannerjee above alluded to.

Secondly.—"The discovery of nineteen articles, stolen from the prosecutor, in the jungle close to their houses.

Thirdly.—"The discovery of three of the brass vessels, of which the prosecutor had been robbed, in the house of prisoner No. 22, and the statement made by the said prisoner, that they had placed the same therein.

Fourthly.—"The recognition of the whole of the said property by the prosecutor and his witnesses.

Fifthly.—"The evidence of Soobhal Dey (witness No. 6) as far as it showed that these prisoners were about to place certain brass articles in the house of prisoner No. 22, on the 10th or 11th Cheyt.

Sixthly.—"As much of the evidence of witnesses Nos. 5 and 7, as went to show that prisoner confessed his having received ten brass vessels from them.

"The evidence against prisoner No. 22 was as follows:—

First.—"The discovery of three of the brass vessels, taken from prosecutor, in his house.

Secondly.—"Recognition of the said property by the prosecutor and his witnesses.

Thirdly.—"The evidence showing that when the said property was first found, he claimed it as his own.

Fourthly.—"The evidence showing, that he did not acknowledge having received the same from the other prisoners until the next day.

Fifthly.—"A separate case, reported by the officiating joint magistrate while the trial was in progress, and investigated by my orders (see record and officiating joint magistrate's *roobukaree*, dated 23rd August 1852, annexed to the proceedings of this court,) in which it was proven, that the prisoner had written a letter of instructions to his friends outside the jail, in which certain witnesses of the prosecution were mentioned as his well-wishers by name, and were requested to do everything they could to impress the sessions judge with the idea that he had said the brass vessels had been received by him from the other prisoners *directly they were found, and not the day after.*

"All the prisoners pleaded '*not guilty.*'

"The defence of Madhie Roy Chowkeedar (No. 22) was, that he knew nothing of the dacoity; that the prisoner No. 22 had accused him wrongfully, because he had had a quarrel with him about some *chakran* land, and the mustard seed found in his house had been given to him by certain *ryots.*

"That Huri Roy Tabedar (No. 21) first affirmed that he had been named by prisoner No. 22, out of previous enmity, and then urged an *alibi* on the day after the dacoity.

"The witnesses of neither of the above prisoners substantiated their allegations, and I therefore found them guilty of the dacoity, in full legal proof, and (after completion of their trial in the case of Cheedam Naik, the other prosecutor; Q. V.) sentenced them as noted.

"This sentence of course formed a moiety of the consolidated one of sixteen (16) years', with labor and irons, which the Regulations authorized me to inflict upon police officers, against whom the crime of dacoity had been proven.

"The defence of prisoner Guddie (No. 25) was, that he had received the brazen utensils from the others, under the impression that they were their own property, and had merely been made over to him for safeguard, while the said prisoners were on duty as police officers; and that he was a respectable man, well to do in the world, and incapable of being a fence. He added that he had been unwilling to take charge of the articles, because he had heard of so many dacoits going about, and had told Madhie and Huri that they might put them into his house, before witnesses if they liked, that he would certainly not do so himself.

"Some of the witnesses for the prosecution, viz., Nos. 1, 4, 5, 6, 7 and 10, (three of whom were also examined for the defence,) made statements in support of these allegations, but the reason why they did so is shown in the paper, written by the prisoner, which the officiating joint magistrate received from the jail, while the evidence of other and more credible witnesses, viz., Nos. 2 and 9, showed, that the prisoner claimed all the brazen utensils as his own, when first found, and that he did not say anything about his having received them from the others until next day, when nineteen more articles of property, belonging to the prosecutor, had been found close to their houses.

"Moreover, the witnesses most favorable to the prisoners, were not steady in their statements in regard to what he said when the property was first discovered. One of them, No. 6, affirmed that the prisoner was asked no question, when the property was found. Another, No. 5, said, he could not recollect when he had stated that he had received the articles in question from Madhie and Huri; and the mohurir of thanna Dundah, who was summoned by me in the case of Cheedam, prosecutor, made a statement on the point in question, which differed entirely from those of the other witnesses. This, which was evidently intended to favor the prisoner, was that he had claimed four of the brass vessels as his own, when they were found, and said he would account for the rest *next day*. This mohurir,

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Kishen Mohun Bannerjee, has once before laid himself open to strong suspicion of corruption, and the above statement, therefore, not only confirmed such suspicion in my mind, but strengthened the case against Guddie.

"That prisoner was evidently a man of influence in his village, as thangeedars, or fences, very often are, and consequently, not only prosecutor and his witnesses, but the mohurir and burkundauz who investigated the case, seem to have done what they dared towards getting him off. The case of the instructions written in the jail, already alluded to, was, however, a blow before which no previous arrangements could stand, and all that his many friends had done for his salvation was at once annihilated thereby."

"Under all the circumstances, I considered the prisoner's guilt, under the second count, fully proven, and (after completion of his trial in the case of the other prosecutor, Cheedam Naik, Q. V.), sentenced him as noted."

"This sentence formed a moiety of the consolidated sentence of six (6) years' imprisonment, with labor in irons, inflicted upon the prisoner for his guilt in both cases."

"The only further matter that required observation in this case, was accidental non-issue of any order by the officiating joint magistrate, for the return of certain property found in the houses of other suspected persons (including those said to have been recognized by the prosecutor), which were searched by the police. The omission was ordered to be brought to his notice, as well as the suspicious behaviour of the thanna mohurir, Kishen Mohun Bannerjee."

"The rice found in the house of prisoner No. 22, and also a small quantity of mustard seed found in the house of No. 20, which were not proven to be the property of the prosecutor, were of course, returned to those prisoners."

TRIAL NO. 3.—"The house of the prosecutor in this case was robbed some days before that of Ramanund Telce, who prosecuted in the previous one, but the particulars of the two cases (those which relate to the mere act, as well as to the property of Ramanund excepted,) were identical."

"The prosecutor was alone when the dacoity took place, and dared not shout for assistance, because one of the dacoits had laid a naked sword upon his breast, and threatened him with death if he did so."

"That ghatwals were not on their beat at the time of the occurrence, but were shortly afterwards informed of it by the prosecutor, who was told that due notice of it would be given to the darogah. Such, however, was not the case, and the thanna officials heard nothing of it, until the brass vessels were found in the house of Guddie (prisoner No. 25) by the mohurir,

Kishen Mohun Bannerjee. The ghatwals appear to have attempted to conceal the crime, and the officiating joint magistrate has made a separate inquiry into their conduct.

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"The witnesses who depose in the case of Ramanund Telee were, with a few exceptions, examined in this one also. Their depositions are, of course, much the same as before, but the foudjaree mohurir, who wrote those of Nos. 2, 3, 4 and 6, made wild work of them, with the apparent intention of assisting the prisoner Guddie (No. 25.) Witness No. 2, Khettoo Mannah, said before me, that he was *not* present at the search of the said prisoner's house, and the thanna papers showed that this statement was true; but the foudjaree deposition made him say that he *was* present; No. 3, Bissoo Mundy, said, in my presence, that he *had not* been to Amurpore at which statement was supported by the thanna papers, but the foudjaree deposition made him say, that he *had been present* at the search of the aforesaid prisoner's house, and that the latter had said, immediately on the discovery of the brass vessels, that prisoners Nos. 23 and 24 had placed them under his charge. No. 4, Koosul Nundee, said, before me, that he *was by* when Guddie's house was searched, and heard all that was said on the occasion, which statement was borne out by the thanna papers; but the foudjaree deposition made him affirm that he *was not present*. In the foudjaree deposition of witness No. 6, Juggurnath Dignputty, there occurred the following very suspicious passage—'*The brazen vessels, regarding which Guddie said that they had been placed in his house by Madhie Roy and Huri Roy, were extracted from the same in my presence.*'

"The witnesses for the defence, viz., Nos. 16, 17 and 22, had quite forgotten what they had said in the case of Ramanund Telee, in defence of the same prisoners.

"The *sooruthal* and identity of the four brass vessels, claimed by the prosecutor, were sufficiently proven.

"On consideration of the evidence epitomized in Ramanund's case, I came to the same conclusion in this one also, and sentenced all three prisoners as noted.

"The prisoners Nos. 23 and 24, who are police officers, will thus undergo a consolidated punishment of sixteen (16) years, with labor in irons, in banishment, and prisoner No. 25 a ditto, of six (6) years, with ditto, in the zillah jail, and it appeared to me that such punishment would be sufficient.

"It was at the same time ordered, that when the periods of imprisonment, sentenced in Ramanund's case, should have expired, those provided for in the one under remark, should commence, and that the extraordinary manner in which the depositions of witnesses Nos. 2, 3, 4 and 6 had been garbled, and the behaviour of the thanna mohurir, Kishen Mohun

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Bannerjee, should be brought to the notice of the officiating joint magistrate."

Remarks by the Nizamut Adawlut.—(Present : Sir R. Barlow, Bart.)—TRIAL No. 2.—"The prosecutor named several persons whom he had, as he said, recognized in the act; none of these, however, was committed to the sessions. The prisoners Nos. 20 and 21 are charged with dacoity, but there is no satisfactory proof against them. No. 20 is also charged with receipt of plundered property, some grain, thread, cotton, an old coverlet, &c., were found in the jungle outside of the prisoner's house. It is obvious that such articles are not capable of recognition and being found in an exposed place are no proof against the prisoners. The defence of these prisoners is of but little value, but the proof against them is much too weak for conviction; they are acquitted and will be at once released.

"Property, household utensils, recognized by prosecutor and his witnesses, was found buried in the house of No. 22 under his grain; he has endeavoured to prove that the other prisoners left it with him, but has failed altogether; two witnesses, residents in the same village, have deposed to that effect, but the evidence is not trustworthy.

"All the prisoners are committed in a second dacoity case in the calendar, committed some days before this in the house of Cheedam Naik."

TRIAL No. 3.—"The prosecutor in this case is Cheedam Naik, who resides in the village of Puttungpore in which Ramanund Telee, the prosecutor in the case immediately above, also lives. This dacoity was only brought to light in the course of the investigation made into the case of Ramanund. Upon search of the house of No. 25, property belonging to both the prosecutors was found buried under ground beneath some grain, which was stored. The witnesses are the same in both cases, and the nature of the proof against the prisoner No. 25 in this is the same as that established against him in the case of Ramanund. I convict the prisoner on strong presumption of having in his possession the plundered property Nos. 1, 2 and 3, in case No. 2, and Nos. 1, 2 and 3 in case No. 3, knowing it to be such, and confirm the sentence passed on him by the sessions judge of six (6) years' imprisonment, with irons and labor, in the two cases before the court."

PRESENT :

SIR R. BARLOW, BART., *Judge.*

GOVERNMENT

versus.

SHEIKH ALLUM (No. 10), SHEIKH KHUDABUXSH
(No. 11) AND SHEIKH FURID, ALIAS FOUJDAR SHEIKH
(No. 12).

CRIME CHARGED.—Wilful murder of Prem Singh.

Committing Officer, Mr. A. Pigou, magistrate of East Burdwan.

Tried before Mr. J. H. Patton, sessions judge of East Burdwan, on the 4th October 1852.

Remarks by the sessions judge.—“ The prisoners are charged with the wilful murder of Prem Singh, brother of the first witness Huri Singh, by assault and battery:

“ The prisoners plead ‘ *not guilty*.’

“ The witness Huri Singh deposes, in substance, as follows:— On the 24th of Assar last, or 6th July, the prisoners, whose cultivation adjoins his and his deceased brother's, charged him with drawing off the water from their field to his own; that he denied the fact, and a quarrel ensued between them; that on this he and Mahir Sheikh, a brother of the prisoner Sheikh Allum, repaired to one Mukundas Mohunt, a respectable inhabitant of those parts, and begged him to settle their differences; that the only notice he took of their representation was a recommendation to Mahir to beat or kill him (deponent) in the event of his having withdrawn the water; that they then referred to another party, the witness Kashinath Ghose, who returned with them to the scene of action with the view of settling their dispute, and decided against deponent; that the deceased came up about this time with some grain seedlings and threw them down on the ground, on seeing which the prisoner Allum first struck him a blow on the face with his open hand and afterwards with the handle of a spade he found lying there on the temple, which felled him to the ground; that when down, one Olas, senior, (not apprehended,) sprung on the deceased and sat on his chest, while the prisoners and others beat him with their hands and fists; that deponent besought them to desist, saying they had killed his brother; that they then departed; and that on his raising up Prem Singh from the ground, that individual remarked that the prisoners had done the work of destruction on him, and almost immediately expired. The rest of the evidence refers to the arrest of the prisoners and the holding of the inquest on the body of the deceased by the police darogah.

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LUM and
others.

The prisoners were acquitted by the Nizamut Adawlut, for insufficiency of proof against them, in concurrence with the sessions judge.

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others.

" Before the magistrate the witness stated that Mukundas Mohunt, when referred to by him and Mahir, gave directions that the deceased should be beaten or killed, and that the first blow was struck with the spade-handle.

" The next witness, Nubin Sham, deposes, that he saw the prisoners and the brothers, Huri and Prem, fighting together and exchanging blows; that he then heard the prisoner Allum give an order to assault, which was carried out both by himself and the other prisoners, and subsequently saw the prisoner Allum take a spade out of Olas senior's hand and strike the deceased with the handle of it near the eye; that the deceased died about two hours afterwards; and that the blow with the spade was inflicted while the deceased was on the ground.

" This evidence differs from the foregoing in several points, such as the manner of the prisoner Sheikh Alum possessing himself of the spade, the mutual assault and battery, and the position of the deceased at the time the blow with the spade-handle was inflicted. Before this court deponent denies having seen any one spring on the body of the deceased and sit there; while before the magistrate he said that Mahir Sheikh did so assault him.

" The witness Birjolal Singh deposes to the general assault on the part of the prisoners, but declares its immediate cause to have been the use on the part of the deceased of the abusive term '*neria sala*' as applied to the Mussulmen prisoners, a circumstance hitherto unnoticed by the other witnesses. Deponent says he was about four hundred yards off when he witnessed the assault, and that he saw no one strike the deceased with a spade.

" Before the magistrate deponent said that the prisoner Allum took the spade out of Olas' hand, and struck deceased with it on the eye, and that he was only four or five cubits off when he witnessed the transactions above detailed.

" Bhobun Sirkar is the next party examined, and, after detailing the quarrel and dispute between the prisoners and the brothers regarding the withdrawal of the water from the fields, says that the matter was referred to arbitration and given against the latter, with which award the prisoner Allum was satisfied. He then states that the deceased applied the opprobrious epithet '*neria sala*' to the prisoners, on which the prisoner Allum slapped him and he returned the blow, and a struggle ensued; that all the prisoners then set upon the deceased and assaulted him with their hands and fists; that deponent and others interfered and put a stop to the beating, and going to the deceased raised him from the ground, who called out to the retiring prisoners, 'stop, you *neria salas*, I will consign you to destruction yet'; and that the return of the prisoners, and a second assault on the deceased was the result of this expression on his part, from the effects of which he died.

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"The outrageous inconsistency apparent in this and the foregoing evidence relative to the material issue of fact, needs no comment.

"The evidence of one witness only, Kashinath Ghose, relative to the fact, remains to be noticed. He appears to have been the referee in the dispute between the brothers, Huri and Prem, and the prisoners, and to have given judgment against the former. He adds, however, contrary to the statement of the foregoing deponent, that the prisoner Allum was not satisfied with his award, and said he would give Huri Singh an hundred strokes with his shoe as a punishment for his offence. He then details the arrival of the deceased with the grain seedlings, his abuse of the prisoners by the application to them of the term *neria salas*, the single assault and battery, and the consequent demise of the deceased. The rest of his evidence goes to prove the inquest held on the body of the deceased and the arrest of the prisoner Allum.

"The evidence of the civil surgeon tends to prove that death was caused by extensive rupture of the liver, and consequent hemorrhage in the cavity of the abdomen produced by violent external pressure; that there was no appearance of former disease in the liver, and that the muscles over the region of that organ, had on dissection, an inflamed and bruised appearance; and that there were no external marks of violence apparent on the body.

"The prisoners make the same defence. They deny the charge—declare themselves the victims of cabal, owing to a long-standing feud existing between the leaders of the factions to which they and the witnesses to the prosecution severally belong, filing documents in proof, plead *alibis*, and aver that the deceased died of asthma, with which disease he had long been afflicted.

"Nine witnesses were examined on behalf of the prisoners; but the evidence is not calculated to advance their defence or establish the statements pleaded in vindication.

"The *futwa* of the law officer convicts the prisoners of being accessaries to the culpable homicide of the deceased, Prem Singh, and declares them liable to discretionary punishment by *tazeer*.

"I dissent from the finding on three distinct accounts,—*first*, because if the prisoners are guilty at all, they are guilty as principals, and not accessaries, the evidence ascribing to them a direct and personal participation in the deed; *secondly*, because the only violent external pressure, the alleged cause of death, shown by the evidence to have been resorted to, is the jumping and sitting on the body of the deceased, while on the ground, during the assault, and that act is distinctly ascribed to others than the prisoners; and *lastly*, because I cannot convict on testimony as markedly and irreconcilably discordant. I make every allowance for the lapse of time since the occurrence of the events

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deposed to, and the forgetfulness natural to uncultivated and ignorant minds; but I cannot admit as true and legal evidence to the conviction and punishment of an offence of deep magnitude, testimony which represents the main features of a transaction in lights so varied and so utterly dissimilar.

"The evidence of the civil surgeon is conclusive as to the cause of death; and there can be no doubt that a violent assault produced the injuries which issued in the homicide under consideration. The prisoners may have committed that assault, and probably did commit it; but the evidence is insufficient in my estimation to fix the crime on them, and I am consequently bound to reject it. My own impression is, that the quarrel took place in the presence of the brothers Huri and Prem and the prisoners only, and no one else; that the assault was sudden and unpremeditated, and the serious injury inflicted was more the result of accident than design; and that the parties who have deposed to the facts never witnessed them, but have been suborned to bear testimony, with the view of convicting the prisoners of a serious charge, and thereby gratifying the hostile feelings entertained by their retainers towards the partizans of the faction to which the prisoners belong. Under these circumstances, I acquit the prisoners and recommend that they be released, subject to the orders of the Nizamut Adawlut."

Remarks by the Nizamut Adawlut.—(Present: Sir R. Barlow, Bart.)—"There is no evidence before the court which would warrant a conviction. That given by the eye-witnesses, save by Kashinath Ghose, is full of important discrepancies. The deposition of the medical officer clearly shows the cause of death to have been rupture of the liver, whereas the eye-witnesses ascribe it to a blow from a *kodalec*, which felled deceased to the ground, where he was thumped by the prisoners. Others not before the court, are described as the individuals who jumped upon the deceased's body, and by violent pressure caused the rupture of the liver and death therefrom. I concur with the sessions judge in thinking the evidence insufficient, and acquit the prisoners. They will be immediately released."

PRESENT :

R. H. MYTTON, Esq., *Officiating Judge.*

GOVERNMENT

versus

KALACHAND DASS TEORE (No. 1, APPELLANT), KHETTRO BAGDY (No. 2, APPELLANT), MOTEERAM THACCOOR (No. 3), DOKHEERAM BAGDY (No. 4, APPELLANT), HURRISCHUNDER GHOSE (No. 5), TINCOWRI BAGDY (No. 6, APPELLANT), ISHUR BAGDY (No. 7), NOBIN BAGDY (No. 8, APPELLANT), SONA BAGDY (No. 9, APPELLANT), MUDDOOSOODUN DOME (No. 10, APPELLANT), GOBURDHUN DOME (No. 11), MUDDOOSOODUN BAGDY (No. 12), MOHUN TEWARY (No. 13), BASOODEB DOOLIA (No. 14), PREMCHAND MANJEE (No. 15), KARTICK COWRAH (No. 16), GOPAL MUS-SULMAN (No. 17), SUBDUL DOME (No. 18), MODHO BAGDY (No. 19) AND GOBIND MUNDUL (No. 20).

CRIME CHARGED.—Going forth with a gang of robbers for the purpose of committing robbery.

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CRIME ESTABLISHED.—Going forth with a gang of robbers for the purpose of committing robbery.

November 25.

Committing Officer, Mr. E. A. Samuells, magistrate of 24-Pergunnahs.

Case of
KALACHAND
DASS TEORE
(appellant)
and others.

Tried before Mr. W. J. H. Money, sessions judge of 24-Pergunnahs, on the 30th September 1852.

Charge, going forth to commit dacoity. Sentence of seven years' imprisonment, confirmed.

Remarks by the sessions judge.—“The Government was prosecutor in this case. The prisoners denied the charge on which they were arraigned in this court and also before the magistrate. In the Mofussil prisoner No. 1, Kalachand Teore, prisoner No. 2, Khettro Bagdy, and prisoner No. 20, Gobind Mundul, admitted the fact of their going forth for the purpose of committing a dacoity, the first prisoner having arranged the plan in conjunction with prisoner No. 20, whom he had met in the Allipore jail, and naming several of the prisoners as his accomplices. Prisoner No. 20, Gobind Mundul, alluded also to the conversation in jail with prisoner No. 1, and there making arrangements for a dacoity, in which he appears to have been the principal manager, but he did not, it seems, proceed afterwards with the other prisoners, and was not apprehended with them in Tolly's nullah, but subsequently, in consequence of the information furnished by the confessions of prisoners Nos. 1 and 2. It appears that early on the morning of the 14th June, the Kalee Ghaut darogah happened to be on the banks of

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Case of
KALACHAND
DASS TEORE
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Tolly's nullah for a particular purpose, when he observed a suspicious-looking boat passing with a number of persons on board. In consequence of his suspicions, he despatched his burkundaues, who stopped the boat with the prisoners from Nos. 1 to 19 on board, and discovered a pistol, a *koolaree*, hammer, a flint and steel, and powder and shot. Witness No. 1, Gossain Dass Bagdy (admitted as an approver by the magistrate) pointed out all the prisoners, and deposed to the fact of their having proceeded from a ghaut near the Burra Bazar, through the nullah for the purpose of committing a dacoity in the Soonderbunds, prisoners Nos. 1 and 20, Kalachand Teore and Gobind Mundul, being the principal leaders in the scheme; to their returning with the intention of going to Oottumchand Baboo for some further expenses on the road; and to their being apprehended, that is, prisoners Nos. 1 to 19 by the Kalee Ghaut darogah, in Tolly's nullah, with a pistol, powder and shot, and other implements on board. This Oottumchand Baboo is described as residing in the Burra Bazar, and said to be a receiver of stolen property, prisoner No. 3, Moteeram Thacoor, being his servant. Witnesses Nos. 2, 3 and 4, Mujdene Burkundauz, Jumeer Burkundauz and Peeroo Burkundauz and witness No. 5, Haniff Khan, darogah, all pointed out the prisoners, and deposed to their apprehension as described, Nos. 1 to 19 in a boat in Tolly's Nullah, and No. 20 subsequently from information furnished by the other prisoners. Prisoner No. 1, Kalachand Teore, and prisoner No. 2, Khettro Bagdy, complained of being ill-treated by the police. Prisoner No. 3, Moteeram Thacoor, declared he was sent by his master Oottumchand Baboo, with prisoner No. 1 and other coolies to take up his master's boat, which had sunk in the Soonderbunds. He cited witnesses to certify to his good character and to his being a servant of Oottumchand Baboo. Prisoner No. 4, Dookheeram Bagdy, and prisoner No. 6, Tincowri Bagdy, declared they were hired to take up a sunken boat. Prisoner No. 5, Hurrishchunder Ghose, declared he happened accidentally to be at Kalee Ghaut at the time and was unjustly apprehended. Prisoners No. 7, Ishur Bagdy, No. 11, Goburdhun Dome and No. 12, Muddoosoodun Bagdy, declared that they went to Kalee Ghaut for religious purposes, and were apprehended unjustly. Prisoner No. 8, Nobin Bagdy, No. 9, Sona Bagdy and No. 10, Muddoosoodun Dome, declared they were hired to get up a sunken boat. Prisoner No. 13, Mohun Tewary, urged that he happened to be at Kalee Ghaut accidentally, and was unjustly apprehended. Prisoners No. 15, Premchand Manjee, No. 16, Kartick Cowrah, No. 17, Gopal Mussulman, No. 18, Subdul Dome and No. 19, Modho Bagdy, declared they were hired by prisoner No. 3, and prisoner No. 1, Moteeram Thacoor

and Kalachand Teore, to get up a sunken boat. Prisoner No. 20, Gobind Mundul, declared he had been unjustly apprehended, and cited witnesses to certify to his good character. Nothing was elicited in favor of this prisoner or prisoner No. 3, Moteeram Thacoor, calculated to shake the evidence for the prosecution. The jury considered the charge proved against prisoners Nos. 1 to 19, inclusive. "It is true that prisoner No. 20, Gobind Mundul, was not apprehended at the same time with the other prisoners; but it is quite clear that he was concerned with them, proceeded a short way, and then left them, as ascertained by his confession, the evidence of witness No. 1, Gossain Doss, and the confessions of the other two prisoners. There is no doubt that prisoner No. 3 was a servant of Oottumchand Baboo, who is well known to the Calcutta police, and has been apprehended on several occasions on various charges. Taking into consideration the very suspicious circumstances under which the prisoners Nos. 1 to 19 inclusive were apprehended, the Mofussil confessions of prisoner No. 1, Kalachand Teore, No. 2, Khettro Bagdy, and No. 20, Gobind Mundul, and the evidence of witness No. 1, Gossain Doss. I convicted them all upon the charge on which they were indicted upon the strongest presumption, and sentenced them to punishment accordingly."

Sentence passed by the lower court.—Each, seven (7) years' imprisonment, with labor and irons.

Remarks by the Nizamut Adawlut.—(Present: Mr. R. H. Mytton).—"Prisoners Nos. 1, 2, 4, 6, 8, 9 and 10 have appealed, reiterating their defence in the sessions court, that they were employed by Oottumchand Baboo to go to raise a boat in the Sunderbunds: but they have not cited the said Baboo, or any one else, to prove their assertion, which therefore cannot be believed.

"The appeal is rejected."

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Case of
KALACHAND
DASS TEORE
(appellant)
and others.

PRESENT :

A. J. M. MILLS, Esq., *Officiating Judge.*

GOVERNMENT AND KALEE SHUNKUR GOOHO

versus

DOORGA CHURN DOSS (No. 1), ISSUR CHUNDER DOSS (No. 2) AND RAM SHAGUR NUNDEE (No. 3, APPELLANT).

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Case of
RAM SHAGUR
NUNDEE (ap-
pellant) and
others.The proof
against the
prisoner being
considered
conclusive, his
conviction and
sentence by
the sessions
judge were
affirmed on
appeal.

CRIME CHARGED.—1st count, burglary in the house of Kalee Shunkur Goocho, in which property to the value of rupees 765-5-0 was carried off; and 2nd count, receiving and retaining the said property knowing it to have been stolen.

CRIME ESTABLISHED.—Burglary in the house of Kalee Shunkur Goocho, in which property to the value of rupees 765-5-0 was carried off, and receiving and retaining the said property knowing it to have been stolen.

Committing Officer, Mr. W. M. Beaufort, magistrate of Backergunge.

Tried before Mr. A. S. Annand, Officiating sessions judge of Backergunge, on the 6th September 1852.

Remarks by the officiating sessions judge.—“ It appears that on the 24th December last, a burglary was committed in the house of Kalee Shunkur Goocho of Pearpore, in zillah Furreedpore, and property carried off to the amount of rupees 765-5-0. It was inquired into at the time, but no trace of the thieves could be discovered. On the 25th February last, an anonymous petition was given to the magistrate of this district, stating that the prisoner Ram Shagur Nundee (No. 3) and others were professional dacoits and thieves, and had committed a robbery in the house of Hur Chunder Chund in Wuzeerpore and other places named. The thanna darogah was ordered to inquire into these cases, and when about to do so Baluck Dass (prisoner No. 4 in Statement No. 8) came to the thanna and asked a peadah to what place the darogah was going, and what inquiries he had been directed to make. The peadah told the darogah, who apprehended Baluck Dass, when he stated that Ram Shagur Nundee (No. 3) was a relation of his, and a *benamee* petition having been given against him, he had sent deponent to find out what he could in the matter. On this the darogah sent at once for Ram Shagur Nundee, and he stated that he had heard that prisoners Nos. 1, 2, 4 and 5 had committed a burglary in the house of Kalee Shunkur Goocho in Poos last. They were apprehended, and Nos. 1 and 2 confessed that they had a quantity of property, which prisoners Nos. 3 and 4 had given them after they had been with them, in a boat, to Koomar Nundee, in

Furreedpore in Poos last, which they gave up to the darogah. On this he sent to the darogah of Sheeb Chur in Furreedpore, in which thanna Kalee Shunkur Goocho lives, for a list of the property stolen from him, and sent a burkundauz to bring him in person; but as he is a very old man he sent his gomashta, Ramgutty Kur, to represent him, and he at once identified the greater part of the property found in the houses of the prisoners. On these facts being reported to the magistrate he requested me to obtain the sanction of the court of Sudder Nizamut to the trial of the case in this zillah, as the prisoners resided in it, the property had been found in their houses, and two of them were implicated in another case of burglary then pending before him. The sanction of the court to this arrangement was accorded by their letter, No. 694,* of the 27th May last, a copy of which is filed with the case.

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Case of
RAM SHAGUR
NUNDEE (ap-
pellant) and
others.

* *From the Officiating Sessions Judge of Backergunge to the Register of the Nizamut Adawlut, No. 27, dated 19th May 1852.*

"I have the honor to forward copy of a letter, No. 95, of the 18th instant, from the magistrate of this district, to my address, soliciting the court's sanction to the transfer of a case noted in the margin, from Furreedpore to this zillah, the parties implicated being residents in this district, and implicated in a second case of burglary, which is now pending before the magistrate here, and to recommend, for the reasons given, that the request may be complied with."

RAMGUTTY KUR

versus

MOHESH CHUNDER DUTTO, &c.

From the Magistrate to the Sessions Judge of Backergunge, No. 95, dated the 18th May 1852.

"Under the provisions of Section II, Regulation VIII. of 1822, I have the honor to solicit the favor of your applying to the Nizamut Adawlut, to transfer the case noted in the margin, from Furreedpore to this zillah."

RAMGUTTY KUR

versus

MOHESH CHUNDER DUTTO, &c.

"The burglary with which they are charged, and to the commission of which two of them have confessed, was committed in Furreedpore, but the prisoners live in Backergunge, and the property was found in their houses."

"My reason for soliciting the transfer is, that two of the prisoners are also implicated in a second case, which is now pending before me, and their transfer to Furreedpore would be attended with very great inconvenience."

"I have in the mean time attested the evidence of, and dismissed, the witnesses in attendance."

From the Register of the Nizamut Adawlut to the Officiating Sessions Judge of Backergunge, No. 694, dated the 27th May 1852.

"The court, having had before them your letter, No. 27, of the 19th instant, direct me to inform you that, under the circumstances stated, they authorize the magistrate to investigate the case in question, and if necessary, to commit the prisoners to the sessions court of Backergunge, filing this order with the record of commitment."

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Case of
RAM SHAGUR
NUNDEE (ap-
pellant) and
others.

"The prosecutor, Ramguttay Kur, on the part of Kalee Shunkur Goocho, deposes, that a burglary took place in his master's house on the 10th Poos last, (24th December), a hole having been dug through the bottom of the wall, and three boxes opened, and their contents, consisting of money, gold and silver ornaments, and clothes, to the value of rupees 765-5-0, carried off.

"The prisoner No. 1 confessed at the thanna and before the magistrate that in Poos last he had hired a boat at the instigation of prisoner No. 3, and gone with him and Nos. 2 and 4 to Koomar Nundee, in Furreedpore, which is near to the house of the prosecutor; that Nos. 3 and 4, and another man who was with them, named Rajchunder Dass, vakeel, had left the boat at night and returned with property, part of which they had given him, and he had pawned with his father, in whose possession the articles Nos. 47, 48, 49 and 50 were found. Prisoner No. 2 confessed to the same effect, saying that the property found in his house Nos. 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27 and 31, was given to him after the excursion before noted, by prisoners Nos. 3 and 5.

"Prisoner No. 3 denied all knowledge of the robbery in all stages of the case.

"The property given up by the prisoner No. 1, and the property found in the house of prisoner No. 2, previously mentioned, was clearly identified by prosecutor and witnesses as belonging to Kalee Shunkur Goocho, and in the house of the prisoner No. 3, a red silk *saree* was found, of a peculiar pattern, about which there could be no mistake, which was also identified by prosecutor and his witnesses as the property of Kalee Shunkur Goocho.

"The jury found the prisoners Nos. 1, 2 and 3, guilty of the charges on which they were indicted. I concurred in this verdict, and sentenced them as entered in column 12.

"Ram Shagur Nundee had been previously imprisoned for three (3) years for theft, and was sentenced more severely than the others on that account."

Sentence passed by the lower court.—Nos. 1 and 2, each, seven (7) years' imprisonment, with labor and irons, and No. 3, ten (10) years' imprisonment, with labor and irons.

Remarks by the Nizamut Adawlut.—(Present: Mr. A. J. M. Mills.)—"The prisoner No. 3 has appealed. He admits the finding in his house of the articles alleged by the prosecutor to have been with others, stolen from him, and claims them as his own. One witness cited by the prisoner alone deposed that he had on one occasion seen the articles in question in the prisoner's house, whereas the evidence to the identification of one of the articles, *viz.*, a red silk *saree* of a peculiar pattern, as the property of Kalee Shunkur Goocho, is most satisfactory. He is indicated by

the other prisoners as having had a prominent share in the affair. The fact of the *saree* taken at the robbery being found in his possession, joined with his notorious bad character, and the general circumstances of the case, affords a violent presumption of his guilt. I concur in the conviction, and confirm the sentence."

PRESENT :

J. R. COLVIN, Esq., *Judge*.

GOVERNMENT AND GUNESH MAHTO

versus *

JUGGERNATH (No. 1), AUDA (No. 2, APPELLANT) AND PANCHOO (No. 3).

CRIME CHARGED.—Burglary and theft, (with personal injury,) to the amount of 8 annas.

CRIME ESTABLISHED.—Nos. 1 and 3 burglary and theft, (with personal injury,) to the amount of 8 annas, and No. 2, accomplice in the above crimes.

Committing Officer Mr. R. O. Heywood, officiating magistrate of Bhargulpore.

Tried before Mr. R. W. Farquharson, sessions judge of Bhargulpore, on the 13th August 1852.

Remarks by the sessions judge.—"Prisoners all plead '*guilty*.'

"Gunesh Mahto, prosecutor, was going out of his house for a certain purpose before daylight in the morning when he saw a *scind* made at the back of his dwelling. He seized prisoner Auda (No. 2) in the *scind*, when the other two attacked and struck him several blows with a *lattee*, a mark of one on his head still remains. He recognized the two prisoners Auda and Juggernath, who live in the same village with him. On being struck with the *lattees* he called out, and three of the neighbours, witnesses Nos. 1, 2 and 3, came to his aid and found him wounded; but the thieves had ran away. He gave notice next day at the thanna, and on the following day the prisoners were apprehended by the police at their own houses.

"The confessions, both in the Mofussil, before the magistrate, and in this court are most complete and unswerving. Juggernath confesses to the burglary, theft, and personal violence; Auda and Panchoo to the theft only.

"Prisoners say they were driven to the crime by hunger, they came from the southern part of the district where the distress is very great, owing to an entire failure of the crops. Last year this failure was partial, owing to great drought; this year it is entire, owing to long continued wet.

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Case of
RAM SHAGUR
NUNDEE (ap-
pellant) and
others.

1852.

November 25.

Case of
AUDA (appel-
lant) and
others.

Sentence by the sessions judge, on a lad of only fourteen years of age, for accompliceship in burglary and theft in a season of scarcity, of imprisonment for three years, with labor and irons, reduced to imprisonment for one year, with labor, but without irons.

1852.

November 25.

Case of
AUDA (appel-
lant) and
others.

"The *fatwa* of the law officer is, that the crime charged in the calendar is proved against Juggernath and Panchoo as principals, and Auda as accomplice, in which I concur. Auda is a mere lad of thirteen or fourteen years of age; none of them are old offenders. I sentence the prisoners to three (3) years' imprisonment, with labor in irons."

Remarks by the Nizamut Adawlut.—(Present: Mr. J. R. Colvin).—"With reference to the circumstances of this case, and to the youth of the prisoner Auda, a lad, stated to be only fourteen years of age, the court reduce the sentence passed upon him by the sessions judge to imprisonment for one (1) year from its date, with labor suited to his age, but without irons."

PRESENT :

A. J. M. MILLS, Esq., *Officiating Judge*.

GOVERNMENT

versus

NOBEEN BHUR TANTEE

1852.

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Case of
NOBEEN
BHUR TAN-
TEE.

The prisoner was convicted of perjury, in having made contradictory statements on oath. The fact that it was not known which of these was true, was not considered material, and the second deposition was recorded after the prisoner had acknowledged his first one to be false in a petition voluntarily tendered by himself, as to the contents of which he was examined.

CRIME CHARGED.—Perjury, in having, on the 19th May 1852, in a case under Regulation VII. of 1822, intentionally and deliberately deposed, under a solemn declaration taken instead of an oath, before the deputy collector of Hooghly, Baboo Joy Chunder Mujoomdar Roy Bahadoor, that the land in dispute is the property of Sham Doss Bundopadhea, from whom he has taken it on rent for his residence there, and in having, on the 22nd May 1852, before the above deputy collector, Baboo Joy Chunder Mujoomdar, again intentionally and deliberately deposed, under a solemn declaration taken instead of an oath, that the land in dispute is the property of Sib Chunder Bundopadhea, from whom he has taken the same on rent for his residence there, and that Sham Doss Bundopadhea has no connexion with it, such statements being contradictory to each other on a point material to the issue of the case.

Committing Officer, Mr. C. T. Buckland, magistrate of Hooghly.

Tried before Mr. E. Bental, additional sessions judge of Hooghly, on the 18th September 1852.

Remarks by the additional sessions judge.—"This was a case of perjury perpetrated in a case under Regulation VII. of 1822, before a deputy collector of Hooghly, but committed for trial by the collector, from which the following questions arose:—Why

to be false in a petition voluntarily tendered by himself, as to the contents of which he was examined.

did not the deputy collector commit the case, and as he did not do so could the collector do so? I am of opinion that the deputy collector himself might have committed the case of perjury, as he could dispose of the case under Regulation VII. of 1822, in which the perjury took place; but that the collector also had the power to do so, as under Regulation IX. of 1833, Section XXII. the proceedings were subject to his revision and control without appeal, and consequently I proceeded with the trial.

"The prisoner gave his evidence on the 19th of May, as is stated in the charge, and he acknowledges in his defence that he did so, and that it is a true statement. On the 22nd of May he appeared before the deputy collector and presented a petition, showing that he had made a false statement, &c., and his deposition was consequently taken on solemn declaration, as is also stated in the charge. He allows that he presented the petition, but he says that he did not know what it was about, and that he did not make any deposition on solemn declaration, but only told the names of his father and grand-father. The witness Ram Taruk who was present, deposes that the evidence was taken on solemn declaration, and Nund Gopal deposes that he was present when the solemn declaration was made, and the writer of the deposition deposes that he wrote as he was told to do by the deputy collector, but he attended to the deputy collector and not to the deponent.

"The law officer finds the prisoner guilty, and I agree with him in thinking that he did make two contradictory statements under solemn declaration on a point material to the issue of the case and in the usual manner in which evidence is taken in the office of the collector, where the same strictness of form is not required as in criminal courts.

"On examining the document, it appears possible that the deposition was not at first headed as having been taken under Act V. of 1840, although this part of the heading was written with the same pen and ink. The deputy collector has also been careless in not signing the deposition, although he signed an order immediately below it.

"As the prisoner came forward of his own accord to make a confession of his guilt, it was erroneous to take his deposition on solemn declaration, and consequently the prisoner should be released. This principle was determined in the case of *Govern-ment versus Gunga Bishen*, page 180, volume II. of *Nizamut Adawlut Reports*. The crime, however, having been fully perpetrated, my duty is to pass the minimum sentence in my power on the prisoner and to propose to your court that he be released. I should have directed the collector to make a second charge and to have accused the prisoner of perjury on the 19th of May, but there was no evidence to support the confession, and it is

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Case of
NOBEEB
BHEE TANN-
TEE.

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irregular to convict of perjury on a confession without some evidence to support the truth of it."

Resolution of the Nizamut Adawlut, No. 1446, dated 8th October 1852.—(Present: Mr. A. J. M. Mills.)—"The court, having perused the proceedings above recorded, held on the commitment and trial of Nobeen Bhur, observe, that the writer of the deposition of the 22nd of May, being unable to prove the evidence, which the prisoner then gave, as he wrote down only what the deputy collector dictated to him, and paid no attention to what the prisoner said, it is necessary to take the deposition of the deputy collector himself, for the purpose of proving the matter sworn to by the prisoner on that day. It is therefore ordered that the record of the case, with a copy of the additional sessions judge's letter, No. 71, of the 23rd of September 1852, be transmitted to the sessions judge of Hooghly, the additional sessions judge being now at Bancoorah, where he is likely to be employed for some time, with instructions to reopen the case and take the deposition of the deputy collector on solemn affirmation, in the presence of the prisoner. He will call for a new defence from the prisoner and a fresh *futwa* from the law officer and then submit his proceedings, with those now returned, for the orders of the court."

With reference to the above resolution, the officiating sessions judge of Hooghly re-submitted the papers in the case with the following letter, No. 184, dated 10th November 1852.—"I have the honor herewith to return the paper, in the case of Government *versus* Nobeen Bhur Tantee, charged with perjury, with the deposition of the deputy collector, Joy Chunder Muzoomdar, a new defence from the prisoner and *futwa* from the mouleece."

Remarks by the Nizamut Adawlut.—(Present: Mr. A. J. M. Mills.)—"The deputy collector has deposed to the correctness of the deposition which was made by the prisoner on the 22nd of November, and was taken down in writing in his, the witness's, presence. He adds that the prisoner presented a petition to him; that he interrogated him as to its contents; and that the prisoner acknowledged that he had in his former deposition, taken on the 19th of November, made a false statement. The case was pending before the witness, and there was, I think, nothing objectionable in his re-examining the prisoner on oath as to his knowledge of the facts as they had really taken place, and as he had voluntarily stated them to be in his petition. The case quoted by the sessions judge is not in point. There the magistrate took the second examination of the prisoner, which he had attested, as a confession on oath, and the judge considered that it had been made under an impression of fear. Here the prisoner came forward of his own accord and acknowledged that he had misstated facts, and represented in a petition

what had really taken place. The facts were material to the point at issue.

"I concur in the conviction of the prisoner. There is nothing to show which deposition was false. It is as probable that he may have been induced to come forward and deny his first deposition, which was the true one, as that he may have been suborned to swear falsely in the first instance. He is an uneducated man, and was, no doubt, influenced by others to perjure himself. Under all the circumstances of the case, I sentence him to one (1) year's imprisonment, with labor."

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Case of
NOBEEN
BIHER TAN-
TEE.

. PRESENT :

A. J. M. MILLS, Esq., *Officiating Judge.*

FAKUROODDEEN SHEIKH

versus

AMAN SINGH.

CRIME CHARGED.—Wilful murder of Rooplall, son of the prosecutor.

1852.

CRIME ESTABLISHED.—Culpable homicide of Rooplall.

November 26.

Committing Officer, Mr. C. F. Carnac, officiating magistrate of Moorshedabad.

Case of
AMAN SINGH.

Tried before Mr. D. I. Money, sessions judge of Moorshedabad, on the 22nd July 1852.

The prisoner's appeal, which contained a plea not advanced at the trial, was rejected.

Remarks by the sessions judge.—"On the 25th May last, Dhoorooop Singh was tending his cows opposite the prosecutor's house. The cows eat up some young bamboos belonging to the prosecutor, who abused him for it; upon which Dhoorooop Singh went to Jowahir, his brother, and informed him of it; when the prisoners Aman Singh and Nund Loll came to the spot and Nund Loll called out to Aman Singh to beat the prosecutor. Aman Singh attacked Rooplall (deceased), the prosecutor's son, and struck him on the head with a *lattee*, which brought him to the ground and made him insensible.

"The prosecutor coming to his help was also struck by Aman Singh two blows on the head with the same *lattee*. The deceased was severely wounded, never spoke after, and died the following day at 12 p. m. The civil surgeon stated in his deposition that fracture of the skull was the cause of his death, and must have been produced by a heavy and blunt instrument. The witnesses for the defence stated nothing in exculpation of the prisoners. The *futwa* of the law officer convicted the prisoner Aman Singh of culpable homicide of the deceased, and Nund Loll of taking an active part in the assault which ended in the culpable homicide of the deceased. Concurring in the finding,

*

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AMAN SINGH.

I sentenced the prisoners as stated in the proper column. There was no difficulty with reference to the extent of the guilt of the prisoner Aman Singh, and therefore no difficulty in sentencing him to such punishment as, in the opinion of the sessions court, the perpetration of the crime deserved; but in the case of the prisoner Nund Loll it was difficult, from the facts and the evidence, to fix the degree of criminality. He gave the order to *beat*, 'mar! mar!' and there is nothing to prove that it was his wish that the deceased should be beaten to the endangering of his life, or that his revengé, under the provocation excited, sought for more satisfaction than a severe corporal chastisement. It is true he was the instigator, and the death of the deceased was caused by a blow, which, but for the instigation, might not have been given; and he may therefore be considered as a greater offender than the person who deals the blow in obedience to the order. But I do not think this would be a just view to take in all cases. The order may be often *transgressed*, where the intention may have been simply to beat. Life may be recklessly on a sudden sacrificed by the *manner* in which the order is carried out. A blow may be struck on the head, as in this instance, with a heavy dangerous weapon, which would, in all human probability, cause death; and in such case, the crime extending so much further than the original intention or expression of intention, I think the man who gives the blow more criminal than the man who gives the order, if the degree of guilt of each is weighed and compared impartially in the scales of justice. Should a strict rule be laid down for the infliction of an *equal* punishment on both, this opinion would be an exception to the rule; but having gone most carefully through the case, and considering that the prisoner Nund Loll should have the benefit of the doubt to the extent of his criminality, I sentenced him to a less severe punishment than the prisoner Aman Singh."

Sentence passed by the lower court.—Seven (7) years' imprisonment, with labor in irons.

Remarks by the Nizamut Adawlut.—(Present: Mr. A. J. M. Mills.)—"The prisoner Aman Singh has appealed. The appeal of Nundlall Singh, who instigated the assault on the deceased, was rejected by me on the 4th instant. The evidence to the prisoner striking the deceased on the head with a club, which caused his death on the following day, and to his striking the prosecutor on the head two blows with the same club, is distinct and conclusive. The prisoner in his petition of appeal states, that the deceased received the blow in a mutual fight, which arose out of a drunken quarrel; but he made no such defence at his trial, and it is unsupported by any evidence. I reject the appeal, and confirm the conviction and sentence."

PRESENT :

W. B. JACKSON, Esq., Judge.

BHQLAH, MUSST. BHEKNEE AND GOVERNMENT

BHOWKEE.

CRIME CHARGED.—Rape committed on the person of Musst. Bheknee. 1852.

Committing Officer, Mr. A. Hope, officiating magistrate of Monghyr, Bhaugulpore. November 26.

Tried before Mr. R. N. Farquharson, sessions judge of Bhaugulpore.

Case of BHOWKEE.

Remarks by the sessions judge.—“The circumstances of the case are as follows :

The prisoner was convicted of rape. The evidence for the prosecution being considered to establish the charge, while that for the defence did not sustain it.

“The prisoner Bhowkee is accused of committing rape on the person of Musst. Bheknee in open day, in the presence of several witnesses. He pleads ‘*not guilty*.’

“Musst. Bheknee is a very slight, and rather comely girl, about sixteen years of age, of the *Koonjrin* caste, (Mahomedan,) some time married, but not then living with her husband ; had not cohabited with him for some months ; was living with her grandfather (Bhola, prosecutor).

“On the day in question, the 6th of July 1852, corresponding with the 5th of Sawun 1259 F. S., Bheknee went out, about mid-day to a mangoe tope near her home, to take some food to a young sister (a child of five or six years old) who was watching mangoes on the spot. Having given the child her dinner, Bheknee was sitting down in the tope, when prisoner came suddenly on her from behind, and seizing her in his arms carried her off to a ditch close by, and there effected the rape. Bheknee had cried out, and struggled from the first, and a number of people had collected. Witnesses Nos. 1, 2, 3, 4 and 5, all depose to having seen the act. The ditch was between the mangoe tope and the village, about fifty yards from the latter, about four feet deep and a *luggee* or so wide ; there was no water in it. Bhowkee, prisoner, is a *mahajun*, of the *Buneah* caste, is a stout, truculent looking man of about forty, well able to carry off Bheknee in his arms, notwithstanding any struggling on her part.

“Prisoner in his defence denies having had connexion with Bheknee : states that Bhola, prosecutor, owed him money ; that on his demanding payment, Bhola and some companions, with whom he was drinking, set on him and beat him ; that he, prisoner, went to the thanna to complain, and there met Bhola, and his friends about to accuse him of this rape as a set-off against

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BHOWKEE.

the complaint of assault. Prisoner in a petition, dated the 11th instant, further pleads that the medical evidence disproves the crime; that the evidence of witnesses as to seeing the act from a distance of from fifteen to twenty yards as perpetrated in a ditch three *hatha* deep is impossible; that the taking bribes or committing rape are not crimes of public places and in open day. If such a thing had happened as stated, the chowkeedar of the village would have apprehended him on the spot, or if the number of people, said to have been spectators of the act, were in fact assembled, why did they not apprehend him? That the real origin of this accusation is the debt owing him by Bholi, prosecutor; that Bheknee never said a word at the *thanna* about her bleeding state; she is a married woman, and cohabits with her husband, visiting him at his father's house, where he resides. At the season when this is said to have happened, all ditches would have been full of water. Complainant's husband does not press this charge; his evidence is with the *foujdaree* papers. The *darogah*, in his report, states, that he sent in the case because Bheknee's life was threatened by her relations. The Chumarin, (Amroo, witness No. 6), whose evidence is recorded as to the state of Bheknee's person after the act, deposes to having made her examination three days after the alleged rape, and found unmistakable marks of sexual intercourse effected with violence. This evidence should be carefully considered, as, if true, it must be inferred that Bheknee had not had any calls of nature during that period.

"The jury give a verdict of guilty; in which I concur.

"The extraordinary and very improbable circumstance of a crime of this nature being committed in broad day, in a situation far from private (the mangoe tope at that season being always occupied by watchers), has made me more than commonly cautious in forming an opinion on the guilt of the prisoner. The evidence however being so very distinct, and the defence weak and unsupported, I can come to no other conclusion than that prisoner's lust got entirely the better of his reason, and that the story as related in my fifth paragraph is substantially true.

"Had the defence admitted the criminal connexion, asserting that Must. Bheknee was a consenting party, and only cried out when discovered, it would have been more difficult to decide between direct evidence and glaring improbability. The plea urged, however, is of an entirely different nature; and failure in its establishment goes almost as far to criminate the prisoner as the unswerving depositions of the eye-witnesses.

"With regard to prisoner's written defence, I may remark that there is no medical evidence. The civil surgeon says distinctly that, under the circumstances, he can give no opinion on the subject; nor is such evidence requisite. It is not attempted

to establish the fact of Musst. Bheknee's virginity prior to the rape, and any marks of violent access would hardly be perceptible in a married woman after nine days, which period elapsed before Bheknee was submitted to medical inspection. The evidence of Musst. Amroo Chumarin (No. 6) had no weight in my opinion. The woman is very old, and so nearly blind, that her perception of the facts she deposes to is almost a physical impossibility. The plea, with regard to the dry state of the ditch at that rainy season, has some plausibility, but the evidence is too strong and consistent to be set aside by mere probabilities. The other pleas rest on the same line of argument, but I cannot admit their validity.

"Bhowkee, prisoner, was once before named in a case of rape, as one of several aggressors; but the case was dismissed by the magistrate on the 28th of February 1851, without his being summoned. The parties were Teka Roy and Musst. Roopa, prosecutors, *versus* Hunooman Dutt, Bhowkee, Doorga and others. The case is in the record."

Remarks by the Nizamut Adawlut.—(Present: Mr. W. B. Jackson).—"The direct evidence to the fact of the prisoner Bhowkee taking the woman Bheknee up in his arms and carrying her a short distance to the ditch which runs round the mangoe tope, and there committing rape on her person, is quite sufficient to establish the fact. The evidence of the Chumarin and of Bhola to the fact that blood was found on Bheknee's person, as proof of the fact, appears to me deserving of no credit; but I find nothing to set against, or throw suspicion on, the direct and positive evidence of the main fact. The evidence of the witnesses to the defence goes to prove an assault on the prosecutrix by Bhola and others. I find nothing in this evidence to induce me to doubt that for the prosecution."

"I convict the prisoner Bhowkee of rape, and sentence him to imprisonment, with hard labor and irons, for seven (7) years."

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Case of
BHOWKEE.

PRESENT :

A. J. M. MILLS, Esq., *Officiating Judge.*

GOVERNMENT

*versus*JUGGERNAUTH SAHOO (No. 1), DHURMOO PURIRA
(No. 2) AND MUDHOO PURIRA (No. 3).

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Case of
JUGGER-
NAUTH SAHOO
and others.The con-
viction of per-
jury affirmed,
but sentence
mitigated as
proposed by
the sessions
judge.

CRIME CHARGEb.—No. 1, perjury, in having, on the 13th January 1849, knowingly and deliberately deposed, under a solemn declaration administered in lieu of an oath under Act V. of 1840, before the assistant collector in charge of the collector's office, in Summary Suit, No. 410, of 1848, in which Mohunt Ramkissen Doss was plaintiff, and Brijmohun Nundee, defendant, that 'he did not see the *rahinnama* which was filed in the ' said Summary Suit either written or registered'; and having, on the 21st April 1852, in like manner, deposed before the moonsiff of Pooree, in suit No. 16, of 1852, in which Mohunt Narain Doss was plaintiff, and Musst. Sreemutty defendant, that he was present when the said *rahinnama*, copy of which was filed before the moonsiff, was written and the money was paid, and that he affixed his *huldee moonda suntuk*, or mark, thereto as witness, the same being false, as his name is not attached to the document, and the above depositions being contradictory the one of the other on a point material to the issue of the case. No. 2, perjury, in having, on the 21st April 1852, knowingly and deliberately deposed, under a solemn declaration made in lieu of an oath under Act V. of 1840, before the moonsiff of Pooree, in suit No. 16 of 1852, in which Mohunt Narain Doss was plaintiff, and Musst. Sreemutty defendant, that Juggernaut Sahoo, (the prisoner No. 1) was witness to the original *rahinnama*, copy of which was filed in the said suit by the defendant, and affixed his mark to his name, which was written by the person who wrote the document in order to support the false evidence of the prisoner No. 1, the same being false, as the said prisoner No. 1 was not witness to the document, and having been made on a point material to the issue of the case. No. 3, perjury, in having, on the 21st April 1852, knowingly and deliberately deposed, under a solemn declaration made in lieu of an oath under Act V. of 1840, before the moonsiff, in suit No. 16 of 1852, in which Mohunt Narain Doss was plaintiff, and Musst. Sreemutty defendant, that Juggernaut Sahoo (prisoner No. 1) was witness to the original *rahinnama*, copy of which was filed in the said suit by the defendant, and the person who wrote the document wrote his name, in order to support the false evidence of the prisoner No. 1, the same being false, as the prisoner No. 1

was not a witness to the document, and having been made on a point material to the issue of the case.

Committing Officer, Mr. H. L. Dampier, officiating joint magistrate of Pooree, Cuttack.

Tried before Mr. M. S. Gilmore, sessions judge of Cuttack, on the 15th October 1852.

Remarks by the sessions judge.—“The case was referred to me as civil judge by the acting moonsiff of Pooree, and made over by me to the magistrate of Pooree, with orders to commit the prisoners for trial before the sessions court.

“The charges as herein recorded fully explain themselves, and the evidence against the prisoners consists of their own depositions recorded either in the collectorate or the moonsiff’s court, copy of the *rahinnama*, or deed of mortgage, (which shows that Juggernaut Sahoo, the prisoner No. 1, was not one of the attesting witnesses to the said document,) and the testimony of the persons who wrote, and those who were present at the time the said depositions were written.

“Juggernaut Sahoo (prisoner No. 1) pleaded, that he was taken by the peadah before the moonsiff against his will, after he had been eating *bhang*, and that he did not know what he said during his examination.

“Dhurmo Purira (prisoner No. 2) denied that he had stated before the moonsiff, that Juggernaut Sahoo’s signature was attached to the *rahinnama*, and that he did not know how the writer had recorded to the contrary.

“Mudhoo Purira (prisoner No. 3) also denied having given false evidence before the moonsiff, and stated, that he had only deposed before the moonsiff, that Juggernaut Sahoo was present when the *rahinnama* was written, and that he did not know how the writer had written differently hitherto.

“The *futwa* of the law officer convicts the prisoners Nos. 1, 2 and 3, of the crimes respectively charged against them; and in this verdict I fully agree, for notwithstanding the evidence given by the prisoners, when cited as witnesses before the moonsiff, regarding the matter of the affixation of Juggernaut Sahoo’s (prisoner No. 1’s) signature to the *rahinnama*, could have no weight, as the document itself refuted the fact, they intentionally and deliberately, and in a manner most reckless of the consequences, falsely deposed, that the *rahinnama* was attested by the said Juggernaut Sahoo, with the view to make the court (the moonsiff) believe, that he had really affixed his name thereto, and their evidence, moreover, tended generally to prove the statement of the prisoner, who cited them to give evidence on his behalf, to the effect that the said prisoner was exempted by his agreement with the prosecutor from paying rent for the house which he alleged had been mortgaged to him, and I consequently

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sentenced them, under the provisions of Clause 2, Section IX., Regulation XVII. of 1817, to three (3) years' imprisonment; but with reference to the fact of their false statements having been rendered nugatory by the absence of Juggernaut Sahoo's name from the *rahinnama*, I think that one (1) year's imprisonment, with labor in irons, will be a sufficient punishment for their offence; and I beg to recommend that the sentence at present passed, may be mitigated accordingly."

Remarks by the Nizamut Adawlut.—(Present: Mr. A. J. M. Mills.)—"The case is, in my opinion, fully made out against the prisoners. As recommended by the sessions judge, I mitigate the sentence passed on each of the prisoners to one (1) year's imprisonment, with labor in irons."

PRESENT:

W. B. JACKSON, Esq., Judge.

DOODUNLAL AND KUNYELAL

versus

MOORLEE DOME (No. 1), CHUNDOO DOME (No. 2), LULIT ROY (No. 3), NEMANEE DOME (No. 4), SHIWA DOME, CHOWKEEDAR (No. 5), BABOO ROY ALIAS KAROO ROY (No. 6) AND BHOLA SINGH (No. 7).

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Case of
MOORLEE
DOME and
others.

CRIME CHARGED.—1st. count, Nos. 1 to 3, burglary and theft of property to the value of rupees 410-0-9; 2nd count, Nos. 4 to 7, accessories after the fact; and 3rd count, Nos. 1 to 7, receiving and possessing stolen property knowing at the time of receiving it that it had been obtained by burglary and theft.

Conviction
and sentence
affirmed by
rejection of
appeal.

CRIME ESTABLISHED.—Nos. 1 to 3, burglary and theft of property to the value of rupees 410-0-9, and Nos. 4 to 7, accessories after the fact in the burglary and theft.

Committing Officer, Mr. R. C. Heywood, officiating magistrate of Bhargulpore.

Tried before Mr. R. N. Farquharson, sessions judge of Bhargulpore, on the 27th July 1852.

Remarks by the sessions judge.—"Chundoo Dome (No. 2) confesses to the burglary and theft; the others plead 'not guilty.'

"This robbery took place in the village of Poonseena by a burglary in the house of prosecutors, who are brothers. Both were absent at the time, but came home immediately on hearing of the theft from their elder brother Chooalal, who was in the village, but not at the house, on the night in question; there

were only women in the house. They were not disturbed, and the theft was not discovered till next morning.

"The theft took place on the night of the 14th of June. Chooalal immediately wrote to his brothers, and gave notice at the thauna. The brothers both returned home, and on the suspicion of Doodunlal, prosecutor, prisoners Moorlee (No. 1), Chundoo (No. 2) and Nemanee (No. 4) were apprehended on the 17th June. The suspicion was excited by their having no visible means of livelihood. They seem to have been pointed out by Bhowa Chowkeedar as bad characters. All the prisoners confessed in the Mofussil, and before the magistrate, to the crimes charged against them; Nos. 1, 2 and 3, to having been present at and assisted in the burglary and theft, and Nos. 4, 5, 6 and 7, to having been accessaries after the fact, either by assisting in carrying away the spoil, or afterwards in concealing the same from observation. The evidence to the confessions is clear and satisfactory, as also is that to the finding and identification of the property, which consisted of silver ornaments and brass utensils and other unmistakable articles.

PRISONER'S DEFENCE.—"No. 1, Moorlee, states that he was merely the tool of Peareelal and Mohurlal, relations of prosecutors; that he committed the crime at their instigation.

"No. 2, Chundoo, repeats the same story.

"3, Lulit Roy, ditto, ditto, ditto.

"4, Nemanee, makes no defence.

"5, Shewa Dome, denies the charge, and repudiates his former confessions.

No. 6, Baboo Roy, ditto, ditto, ditto.

7, Bhola Singh, ditto, ditto, ditto, and attributes enmity against him to prosecutor on account of some land.

"All the witnesses called as to character either state that the prisoners have a bad name, or that they know nothing about them. The darogah in his report to the magistrate gives them the worst of characters, and says, they are the dread of the whole neighbourhood; the jury bring in a verdict of 'guilty' against all the prisoners according to the charges made against them, in which I fully concur.

"There is no doubt but that all the prisoners were nearly concerned in this burglary. Chundoo (No. 2) confesses even before this court to having himself made the *scind*, and a *scind-katee* is found in his house: he is father of Moorlee and Nemanee (Nos. 1 and 4). No. 3 confesses to having been close by the spot, within sight of the transaction. The rest are all convicted, not only on their own confession, but by the finding of the concealed property on their pointing out.

"I sentence prisoners Moorlee (No. 1), Chundoo (No. 2) and Lulit Roy (No. 3) as convicted of burglary and theft, to be im-

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MOORLEE
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November 26. Case of MOORLEE DOME and others. prisoned for seven (7) years, with two (2) years in lieu of corporal punishment, in all nine (9) years, with labor in irons. Prisoner Shewa Dome (No. 5) as a chowkeedar, though convicted only of being accessory after the fact and receiving stolen property knowing it to be stolen, to the same punishment, in all nine (9) years, with labor in irons; and prisoners Nemanee Dome (No. 4), Baboo Roy *alias* Karoo Roy (No. 6) and Bhola Singh (No. 7) accessories after the fact and receiving stolen property knowing it to be stolen, to seven (7) years' imprisonment, with labor in irons. A fine to be levied from the prisoners equivalent to the balance of property unfound, under Act XVI. of 1850. The property recovered from the prisoners to be restored to the prosecutors."

Remarks by the Nizamut Adawlut.—(Present: Mr. W. B. Jackson.)—"The prisoners Moorlee, Chundoo, Lulit, Nemanee, Shewa, Baboo *alias* Karoo Roy and Bhola Singh, have been convicted on their own confessions. There is nothing to throw doubt on the confessions; and I therefore see no reason to interfere with the finding and sentence passed on them."

PRESENT:

J. R. COLVIN, Esq., *Judge.*A. J. M. MILLS, Esq., *Officiating Judge.*

MAHOMED SADUCK

versus

NGA OO.

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Case of
NGA OO.

A Burmese at Tavoy, convicted of the murder of two persons, and of the severe wounding of a third, from irritation, in consequence of a woman, who had at one time lived with him as his wife, having separated from him and refused to return to him without the consent of her father and mother. Sentence, death.

CRIME CHARGED.—Wilful murder.

Committing Officer, Captain C. W. R. Sharp, magistrate of Tavoy.

Tried before Captain H. Berdmore, assistant commissioner Tenasserim Provinces, on the 25th July 1852.

Remarks by the assistant commissioner.—"The prisoner is charged with the murder of Nga Huime, and Mee Huin Aye, and attempt to murder their daughter, Mee Min Beo.

"The prosecutor states, that on the night of the 14th May 1851, about 8 o'clock, he was informed by a peon that one Nga Qo (prisoner) had been stabbing people in the house of one Nga Huime. Prosecutor on going to the house finds a crowd assembled; amongst the crowd he finds Mee Huin Aye, wife of Nga Huime, supported by several persons. She had received a wound. Prosecutor then goes up into the house, and in the verandah

finds Mee Min Beo, Nga Huime's daughter, lying wounded and covered with blood. On entering the house, prosecutor finds Nga Huime lying dead near the door, and at no great distance from the dead body he observes Nga Oo (prisoner) lying on his back; he had a wound on his stomach, which he covered with his hand. The prosecutor questioned him, but could get no rational answer from him. The prisoner is sent to the jail, to which place he is followed by the prosecutor, and again questioned on the subject; he then states that he had some time previous been separated from his wife, Mee Min Beo, but that she had agreed to return to him, and that they were in the habit of meeting clandestinely; that he had sent a person to her parents to endeavour to obtain their consent to his being properly married to their daughter, Mee Min Beo, but that no satisfactory reply could be obtained from the parents; that on the night in question, he had come to the house; that he had been assaulted by Nga Huime and Mee Huin Aye, and abused by Mee Min Beo; that becoming angry, he had stabbed them all. On the following morning prosecutor went by the magistrate's order to the hospital, with his writer, and took down Mee Huin Aye's deposition; that this was read over to Mee Huin Aye, who stated it was correct, but that this statement was not attested by any witnesses or signed by Mee Huin Aye, and prosecutor does not now remember what she said. That two days after this, prosecutor went to the jail and again questioned the prisoner, who made much the same statement as before.

"It appears from the statement of Mee Min Beo, daughter of the two deceased, Nga Huime and Mee Huin Aye, that the witness had formerly lived with the prisoner, though not regularly married to him according to the custom of the Burmese; that after awhile she separated from prisoner; that since their separation prisoner had often endeavoured to induce her to live with him again as his wife. The witness had referred him (prisoner) to her parents; that on the night in question, the witness finds prisoner sitting down at the back part of her father's house; at this time her two parents were sitting in the front verandah. The witness desired the prisoner not to visit her in that way, without having first obtained her father's consent; to this prisoner replied he would; some altercation then took place, and prisoner, who was sitting down muffled up in his *putso* (cloth,) got up and stabbed the witness with a *dah* (knife); the witness called out; her mother, Mee Huin Aye, comes to her, when she (witness) runs out of the house, having received in all six stabs from the prisoner; when outside of the house, she calls for assistance; she hears her mother call out 'Nga Oo' (prisoner) has stabbed me,' and her father, she hears ask, what is the matter.

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" Witness No. 2, Mee Ohga, sister of first witness, states, she lives next door to her parents. On the night in question she hears a noise in her father's house, and after awhile she hears her mother call out 'he has stabbed me;' she becomes alarmed, runs out of her house and finds her sister, first witness, calling for help. She hurries off to a peon living near, but not finding him at home, returns to her father's house. On going up into the house she finds her father, Nga Huime, lying dead, and at a short distance from him she sees prisoner Nga Oo lying on the floor of the house. On the following morning witness proceeds to the hospital to see her mother, Mee Huin Aye, by whom she is informed that Nga Oo (prisoner) had killed her father, and had stabbed her mother and sister.

" Witness No. 3, Alee, a peon, states that on the night in question, hearing a disturbance, hastens to the spot, and there learns that Nga Oo (prisoner) had been stabbing people. He goes up into the house, and in the verandah sees witness No. 1 bleeding from a wound on the bosom; he passed on into the house, and near the door finds Nga Huime lying in a dying state with a wound on his chest; near him was sitting his wife, Mee Huin Aye, with blood on her person. On questioning Mee Huin Aye, she said that Nga Oo had stabbed her. Witness then observes at a short distance the prisoner Nga Oo lying on his back. The witness desires Nga Oo, if he had a knife in his hand, to throw it away; to this prisoner replies, 'I have stabbed them all, and have stabbed myself, and am unable to rise; I have no knife.' On examining the prisoner, witness finds a wound on his stomach, from which protruded a portion of his intestines.

" Witness No. 4, Nga Shouay Yo, corroborates the evidence of the third witness, with the addition that whilst searching for the *dah*, Mee Min Beo had told him it was a *dah kyoon* (small knife); that near the dead body of Nga Huime he finds a small knife; that he asked the prisoner why he had done all this; in reply prisoner stated he had done what he could to get back his wife; that on that night he had come to the house; that they had assaulted him; that becoming angry and excited, he had stabbed them all.

" Witness No. 5, Nga Kan, states that some months previous to the assault, he had been desired by prisoner to endeavour to obtain from Nga Huime and Mee Huin Aye permission for him to return to his wife, Mee Min Beo; that on applying to Nga Huime he was referred to Mee Huin Aye, and by Mee Huin Aye back again to her husband, and could get no satisfactory reply from either, further than that having sold their fishing-net they had no employment for prisoner, but would see about it at the beginning of the rains; that on the night on which the assault took place, prisoner about sunset came to witness's house

and asked for food, which witness gave him ; having eaten it, he went away ; at this time prisoner seems to have been in his usual spirits, and did not even allude to Mee Min Beo or her parents. The witness sees no *dah* in prisoner's possession.

" Witness No. 6, George Whittaker Walter, assistant surgeon, states, on examining the woman Mee Huin Aye, he found she had received five wounds over her abdomen, the principal wound was on the region of the spleen, and this wound caused her death, on the second day, from internal hæmorrhage. On examining the dead body of Nga Huime, a deep wound is found on the left side between the first and second ribs penetrating to the left lung, and wounding some important pulmonary vessels ; that the wound caused Nga Huime's death. On the woman Mee Min Beo are found four wounds in different parts of the bosom, and a severe wound midway between the left elbow and armpit ; she recovered, and quitted the hospital in ten days. That on visiting the prisoner in jail, witness finds him with two wounds on the stomach, from one of which the intestines protruded. The witness states it as his opinion that the *dah* (knife) before the court is an instrument with which all the wounds might have been inflicted ; that the wounds found on the dead body of the man and on the two women could scarcely have been self-inflicted, but that the two wounds found on the prisoner might have been so.

" Witness No. 7, Nga Win, accompanies prosecutor to the hospital to take down the statement of Mee Huin Aye, deceased, as also that of the prisoner Nga Oo, at the jail.

" The verdict of the jury finds the prisoner ' *guilty* ' of the charges. With this verdict I concur.

" The prisoner pleads ' *guilty* , ' and neither before the committing magistrate, Captain Sharp, nor before this court does he make any defence ; before the magistrate he admits the *dah* (knife) to be his property.

" It appears that prisoner had at one time lived with Mee Min Beo ; that for some reason they had separated ; that he had endeavoured to get re-united to her, but had failed to obtain the consent of her parents, the two deceased, Nga Huime and Mee Huin Aye, who seem to have been undecided in the matter and to have trifled with the prisoner ; this may have excited the prisoner, but it is shown in the evidence that shortly before the murder was committed he was playing football ; that he went to the house of Nga Kan, the party whom he had employed to bring about a reconciliation between himself and Mee Min Beo and her father and mother, and from him obtained some food, after which he leaves Nga Kan ; at this time he seems in his usual spirits, and does not even mention Mee Min Beo or her parents, yet within two hours from this time he commits the fearful murder, without

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any apparent provocation other than his failure to obtain Mee Min Beo for his wife.

"There is no record on the proceedings before the magistrate of prisoner's having made any confession; neither is there any eye-witness to the fact of prisoner having committed the murder except the deceased Mee Huin Aye, whose statement was not taken in prisoner's presence, neither is it attested by any witness, or signed by herself; but I consider the whole circumstances, as proved by the evidence, to be such as to leave no reasonable doubt on the mind of prisoner's guilt, and as I find in the case nothing which tends to palliate the crime of which the prisoner has been found guilty, I feel it my duty to recommend that sentence of death be passed on the prisoner Nga Oo, son of Nga Aye and Mee Aye; age, twenty-five years."

Remarks by the Nizamut Adawlut.—(Present: Messrs. J. R. Colvin and A. J. M. Mills.)—"This case has been already before us on a trial, stated according to a memorandum of the commissioner of the Tenasserim Provinces, No. 8, of May 18th 1852, attached to the record, to have been held by the presiding officer, Captain H. Berdmore, senior assistant to the commissioner, under authority previously given to him for that purpose by the Government.

"It has since appeared that such previous authority had not then been formally given for the holding of sessions trials at Tavoy by Captain Berdmore.

"The trial of the prisoner has been consequently held *de novo*, and we have reconsidered the case on the fresh record.

"The evidence and circumstances, as shown by this record, are in every point in the least degree material to a judgment, entirely the same as those exhibited by the record of the first trial.

"We have, therefore, only to repeat the opinion and sentence before recorded by us in the following terms:—

"It is clearly proved that the prisoner became furiously incensed in consequence of a woman, who had at one time lived with him as his wife—though not, it would appear, according to a regular Burmese marriage—having separated from him, and refusing to be married and return to him without the consent, which they withheld, of her father and mother. Under the influence of this feeling he made a savage attack upon all three; wounded the woman in several places with a dagger (knife), killed her father on the spot with the same instrument, and wounded her mother so severely with it that she died of internal hæmorrhage, caused by the wounds, within about forty-eight hours. He also inflicted a dangerous wound on himself, but has recovered from it.

"He pleads 'guilty' on the trial; and the evidence of the wounded woman, Mee Min Beo, the depositions of the prose-

cutor, who is also the Tseetkay, or head native judicial and police officer of the town of Tavoy, and of the writer, Nga Win, attesting the statement taken down in pencil on the morning after the attack of Mee Huin Aye (the mother of Mee Min Beo), who died on the evening of the day next ensuing, and was at the time of giving her statement so exhausted that she could scarcely articulate, and the depositions also of the prosecutor and of three other witnesses as to the clear admissions of his guilt made by the prisoner while lying wounded at the scene of the outrage, and afterwards at the hospital, place it beyond doubt that he was the sole perpetrator of both the murders.

“ The case is one of deliberate and wanton murder ; and even worse in several of its features than that of the Burmese Shuay Nay, who was sentenced capitally by this court.—(See case of February 5th, 1851, Reports, page 113.)

“ We concur with the officer who held the trial that no other than capital punishment can be awarded for the crime. We, therefore, pass capital sentence on the prisoner Nga Oo.

“ The magistrate of Tavoy, Captain Sharp, must be required to explain why he had not the statement made by the prisoner when lying in hospital to the Tseetkay, taken down in the form of a regularly-attested confession, and it is to be remarked that the magistrate's proceedings in the case have not been sent with the record of trial, as directed by the order sent by the court on the trial of Shuay Nay above cited. This latter omission may probably have proceeded from the trial having been held under special orders by an assistant commissioner new to the duty. The commissioner will now communicate copy of the order in question to all his assistants, so that it may be duly attended to in any future instance of their being employed in the holding of particular trials.”

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Case of
Nga Oo.

PRESENT:

W. B. JACKSON, Esq., *Judge.*

GOVERNMENT

versus

SHEIKH HADOO MIRDHA.

1852.

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Case of
SHEIKH HA-
DOO MIRDHA.Sentence of
sessions court
affirmed.

CRIME CHARGED.—Riotously assembling and attacking the house of Sheikh Jurripoolah, Gurripoolah, Amirooddeen and Kulleemdee; and plundering therefrom goods and cattle valued at rupees 149-14-6.

CRIME ESTABLISHED.—Riotously attacking the houses of Sheikh Jurripoolah and three others, and carrying off their cattle.

Committing Officer, Mr. F. Beaufort, officiating joint magistrate of Pubna, Rajshahye.

Tried before Mr. G. C. Cheap, sessions judge of Rajshahye, on the 4th September 1852.

Remarks by the sessions judge.—“The following particulars of this outrage were given in Statements No. 6 for December 1851 and April 1852, when four other prisoners were arraigned on the same charge:—

“ ‘This was a wanton case of cattle-lifting by the prisoners of the Hazleebut factory. Why or on what account they were taken has not been ascertained. Both prisoners are convicted of the charge, by the *futwa*; and concurring, I have sentenced them to the same punishment as if they had stolen the cattle, (three (3) years’ imprisonment), adjudging a fine in lieu of labor as regards No. 15, as he has been sentenced to less than five (5) years’ imprisonment. No. 19 I have sentenced to six (6) years’ imprisonment for the three cases, and there can be no doubt of his being by profession a *latteaal*. The evidence establishing the charge against the prisoners in this case, they have been sentenced as in the preceding column. I may, however, mention that they had been previously sentenced by the joint magistrate on the 19th January 1852, to one (1) year’s imprisonment and rupees two hundred (200) fine, or another year, and rupees fifty (50) in lieu of labor, under Regulation VIII. of 1828; but as I considered their offence (plundering and cattle-lifting, or carrying off cattle forcibly,) not punishable as an affray under Regulation VIII. of 1828, and Construction No. 1154, explaining that the Regulation only applied to cases of affray, ‘regarding lands and *their produce*,’ I quashed the joint magistrate’s conviction, and directed him to pass a proper order.’

"At the same time with Soorooop Chunder and Sheikh Panchoo, the present prisoner was sentenced by the late joint magistrate; but as he had not appealed, a reference was made to the court, who quashed the conviction, (*vide* Resolution,* dated 10th June 1852, No. 781.) Hence the prisoner's commitment and present trial; and the evidence establishing the charge against him, and the *futwa* finding him guilty of being an accomplice, I have sentenced him as stated in the preceding column, taking into account the imprisonment he has already undergone."

Sentence passed by the lower court.—Two (2) years' and four (4) months' imprisonment without irons, and a fine of rupees 100, or labor.

Remarks by the Nizamut Adawlut.—(Present: Mr. W. B. Jackson.)—"I see no reason to interfere with the sentence of the sessions judge on Hadoo Mirdha."

* *Extract from Court's Resolution, No. 781, dated 10th June 1852.*
(*Present: Mr. J. R. Colvin.*)

"The court having perused the papers in the case of Hadoo Sheikh, observe that the sentence passed upon him was certainly beyond the competency of the joint magistrate. The case was not one of mutual affray, but of riotous assault and plunder by the party of prisoners of whom Hadoo Sheikh was one. As the joint magistrate deemed this prisoner deserving of the sentence which he passed (one (1) year's imprisonment, and a fine of rupees 200, or in default of payment, further imprisonment for one (1) year,) he ought to have committed him for trial at the sessions."

"The order of the joint magistrate of the 9th January last, regarding the prisoner Hadoo Sheikh, is therefore quashed. He can commit the prisoner for trial, if he deems fit, under the Regulations."

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Case of
SHEIKH HA-
DOO MIRDHA.

PRESENT:

R. H. MYTTON, Esq., *Officiating Judge.*

KHOOB CHAND JUHOORY

versus

SHEIKH JAFFER (No. 1), SHEIKH KABIL (No. 3, APPELLANT) AND MANICK GAZEE (No. 4, APPELLANT).

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Case of
SHEIKH KA-
BIL (appel-
lant) and
others.

Swindling;
appeal reject-
ed. Sentence
of one year's
imprisonment
with fine con-
sidered, under
the circum-
stances of the
case, far too
lenient.

CRIME CHARGED.—Swindling the prosecutor out of cash to the amount of rupees 201.

CRIME ESTABLISHED.—Swindling the prosecutor out of cash to the amount of rupees 201.

Committing Officer, Mr. E. A. Samuëls, magistrate of 24-Pergunnahs.

Tried before Mr. E. Bentall, additional sessions judge of 24-Pergunnahs, on the 31st July 1852.

Remarks by the additional sessions judge.—“ The prosecutor was induced by the dalal Hunoman Singh (prisoner No. 2) to go from his own shop in the Burra Bazar, Calcutta, to Sealdah, in the thanna of Entally, in the 24-Pergunnahs, to buy coral. The first time that he went he could not see the owner, but he gave one rupee earnest. The next morning he went again and was shown a sample of the coral, but was told to come in the evening with rupees 300 in cash, as the coral had been pledged for that sum. In the evening he went again with witnesses Nos. 1 and 2, and then after dark, without seeing the coral, he was overpersuaded to agree to give rupees 700 for 1,200 *bhurree* of coral, but he found out when he had got into his carriage with it, that one of the three bundles contained artificial coral, and the other two contained bits of brick. If the artificial coral were genuine, it would be worth from three to four rupees by *bhurree*, and its being sold so mysteriously and secretly, in such a place, after sunset, for so very low a price, by a number of coolies, gives strong reason to suspect that the prosecutor thought he was buying stolen property at a very cheap rate. When the prosecutor was starting to go home, prisoner No. 2, (acquitted on trial, and the case reported in the Statements for July 1852,) was going with him inside the carriage, which he scarcely would have done if he were aware of the trick. Prisoner No. 1 was outside the carriage, and was starting with the party under pretence of receiving the rupees 500 which were due, and he was apprehended before he could escape. The prosecutor and his party first drove to the Burra Bazar and refreshed themselves, and

thence went to the thanna with the prisoners Nos. 1 and 2. This was on the 19th of March, and on the 21st they both confessed that they were accomplices in the transaction, but the next day Hunoman gave a different version of it before the magistrate, and I think it is very probable that he was a dupe of others. Jaffer again confessed that he was an accomplice. Kabil was apprehended on the 26th of March, and he confessed on the 28th before the police, and on the 29th before the magistrate he was recognized by the prosecutor and his two witnesses as of the party of swindlers. Manick was apprehended on the 1st of April, and confessed before the police on the 3rd, but he denied his guilt before the magistrate. The prosecutor and his witnesses recognize him among the swindlers."

Sentence passed by the lower court.—Each, one (1) year's imprisonment, without irons, and a fine of rupees fifty (50) or labor, and a further fine of rupees two hundred and one (201) under Act XVI. of 1850, to be paid, if recovered, to the prosecutor.

Remarks by the Nizamut Adawlut:—(Present: Mr. R. H. Mytton).—"This case has already been before the court on the judge's reference regarding Torabooddeen. The prisoners Kabil and Manick now appeal. They have been convicted on full legal proof, and I see no reason to interfere in the case. I have already recorded my opinion that the sentences passed are far too lenient. Manick admitted to the police that this is by no means his first offence."

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Case of
SHEIKH KA-
BIL (appel-
lant) and
others.

PRESENT :

A. J. M. MILLS, Esq., *Officiating Judge.*

SYED WUZEER ALEE AND SHEIKH NUSRUTOOLLAH,

*versus*KUNHYE DOORY (No. 4), THAKOOR TEWARY (No. 5),
SURNAM KOORMEE (No. 6), GOVIND TEWARY
(No. 7), LUCHMEENARAIN (No. 8), DIARAM BRAH-
MIN (No. 9) AND RAMDEHUL KOORMEE (No. 10).

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Case of
KUNHYE DOO-
RY and others.

The evidence
for the priso-
ners' defence
being unsatis-
factory, and
insufficient to
rebut that for
the prosecu-
tion, their ap-
peal was re-
jected.

CRIME CHARGED.—1st count, Nos. 4 to 8, wilful murder of Koorban Alee; 2nd count, beating the deceased severely with intent to murder him; 3rd count, beating Wuzeer Alee; and 4th count, Nos. 9 and 10, accomplices in the above crime.

CRIME ESTABLISHED.—Nos. 4 to 7, culpable homicide of Koorban Alee and beating Wuzeer Alee, and Nos. 8 to 10, accessories in the fact.

Committing Officer, Mr. F. C. Fowle, magistrate of Behar.

Tried before Mr. T. Sandys, sessions judge of Behar, on the 5th August 1852.

Remarks by the sessions judge.—“The prosecutors and prisoners are invalid soldiers, or their descendants, residing in Inglis Fidruckpore. Wuzeer Alee, prosecutor, is a pensioned native doctor, and the deceased was his nephew and adopted (only) son. Bad feeling had shown itself between the Hindoo and Mussulman residents of the place previous to the occurrence under trial; and complaint of which, though not pursued further, was made at the thanna on 6th May last, by one Jumad Alee, in whose house meat being partaken of on the occasion of a marriage, Kunhye (prisoner No. 4), Thakoor (prisoner No. 5), Surnam (prisoner No. 6) and Diaram (prisoner No. 9) and other Hindoos of the village, violently upset the ceremony and maltreated him. The two prosecutors and Zoolfun Khan, (witness No. 1,) were named as witnesses to this complaint.

“Consequent on the bad feeling thus engendered, the tale for the prosecution proceeds, that on the morning of the 12th May last the deceased, accompanied by Zoolfun Khan (witness No. 1) was returning home from the field at some distance from the village, and the prisoners and others armed with clubs had passed in a body before Wuzeer Alee's door-way, abusing him as they did so, as they had already done to the other prosecutor Nusrutoollah, and on seeing the deceased in the distance, Diaram (prisoner No. 9) called out ‘this is the *shikar*’ (game) ‘beat;’ on which surrounding him Kunhye (prisoner No. 4) and Thakoor (prisoner No. 5) killed him on the spot by violent blows on the head, whilst Surnam (prisoner No. 6) and Govind (prisoner

No. 7) and another absconded, struck him whilst on the ground. On the father, Wuzeer Alee, running up, Kunhye, Thakoor, Surnam and Govind, Luchmeenarain (prisoner No. 8) Ramdehul, (prisoner No. 10), and another absconded, also beat him severely, the marks on his person being mostly on his hands and feet, both right and left, and on the back.

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"The foregoing facts are deposed to by the two prosecutors and the four eye-witnesses. Inder Singh, (witness No. 11) the only other witness's testimony, is merely to the tumultuous assemblage of the prisoners.

"An inquest was held on the body the same day, which details four wounds, three of which were on the head. The witnesses to the inquest describe him as a youth of about twenty years of age. Dr. Diaper deposed that, 'although the body was too decomposed to admit of *post mortem* examination, yet the nose appeared to have been beaten in, and there had been a quantity of blood lying congealed on the surrounding parts; also a wound on the upper part of the head, and skull fractured beneath it.'

"All the prisoners plead '*not guilty*'. It may be said of them generally, that they attribute long-standing feuds to the prosecutor, arising out of suits or prosecutions during many years past. The records of some of these were not forthcoming, and amongst them one in which, according to the statements on both sides, the prosecutor, Wuzeer Alee himself, had been imprisoned three (3) years under order of sessions court, December 1824, for severely beating one Imaumbux. Kunhye's defences severally are very incomprehensible; but so much is deducible from what he has said before the police, magistrate, and this court, that altercations had taken place between the two prosecutors on one side, and Thakoor and himself on the other, during which Wuzeer Alee turned out, armed with sword and spear, from the latter of which he, Kunhye, received a graze on a finger of his left hand, though before the police he said this had happened on his shoving Thakoor on one side, at whom it was aimed. A trifling mark was also noticed on his head by the police, which he also called a spear wound. He appeared at the thanna of his own accord the same day, as he says, before the body was brought there, with the intention of lodging his own complaint, a very indifferent one on his own showing, in keeping with the trifling scratches on his person he called spear-wounds. He is a strapping, powerful man. He as well as Thakoor and some other of the prisoners pretend that the deceased came by his death from the pulley falling whilst he was working a *moth*, but not one of their witnesses know anything about it: indeed, those called by Kunhye know nothing in his favor, or the little they do is in favor of the prosecution; and such an accident

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neither corresponds with the marks on the deceased's body, or indeed, that any accident of the kind should prove fatal is most improbable.

"Thakoor (prisoner No. 5) sets up an *alibi*, and pleads that he is unable to wield a *lattee*, having accidentally lost the use of his right arm. Dr. Diaper examined him, and was of opinion that he had an 'an old unreduced dislocation of the right shoulder, rendering offensive use of the *lattee* with that hand impossible.'

"All the other prisoners, Nos. 6 to 10 inclusive, Diaram, (prisoner No. 9) at the same time confirming the pretence set up by Kunhye, set up *alibis* and call witnesses in support of them, of whose testimony it may be generally remarked, that they are either weak or negative or corroborative of the occurrence itself.

"The *futwa* of the law officer, acquitting all the prisoners of wilful murder, convicts Kunhye, Thakoor, Surnam, and Govind of aggravated culpable homicide of the deceased, and beating Wuzer Alee, and declares them liable to the price of blood by *deeyut mooghulaza* for the former, and discretionary punishment by *akoobut* for the latter, and Luchmeenarain and Ramdehul of beating Wuzer Alee, and Diaram as aiding and abetting all three as accomplices, liable to discretionary punishment by *akoobut*.

"In village quarrels of this kind, it is vain to look for disinterested evidence, or to expect that it should be free from party-spirit or exaggeration; that there has been long-standing ill-will between the two parties, latterly aggravated by intolerant and tyrannical behaviour on the part of the Hindoos, the most powerful party of the two in the village, there can be no doubt, and which will thus account for their overbearing conduct on the present occasion. Had there not been a great deal of truth in the prosecution, the prisoners' defence generally would never have been so weak. Of the wanton attack of the deceased in a revengeful spirit by the Hindoo prisoners, in an over-powering body, I entertain no doubt; but the evidence for the prosecution has certainly broken down in its more aggravated particulars relative to the attack in the first instance, which, if maintained in its fullest integrity, would have left the crime little short of wilful murder. The prisoners are said to have passed by the prosecutor's house contenting themselves with simply abusing them, and seeing the defenceless deceased, the adopted only son, in the distance, returning home from the fields, rushed at him saying 'here is the game,' and killed him on the spot; neither localities nor evidence support anything of the kind under examination. The prosecutor's house is on one side of a straight road, the prisoner Thakoor's on the other; (the map No. 28, according to Wuzer Alee's explanations,

correct as to particulars, is incorrect as to bearings, which however are immaterial). In the distance, on this straight road, after having thus passed the prosecutor's house, the prisoners saw the deceased returning home, and rushed at him, yet he was not struck down in the distance, but like the father, Wuzeer Alee himself, close to the *neym* tree, bordering Wuzeer Alee's and his neighbour Bessoo's, deceased, now Nathoo Teylee's, house. Zoofsun (witness No. 1), the deceased's only companion, describes the prisoners as having fallen on the deceased at the *peepul* tree, differently stated at two to five *russees*' distant from the *neym*, when the deceased ran from the *peepul* tree pursued by the prisoners as far as the *neym* tree; yet the other eye-witnesses, Nuzur Alee (witness No. 2), Bhela (witness No. 3) and Nathoo (witness No. 4), deny there ever having been such a pursuit. It is remarkable too that Nusrutoollah, prosecutor, in his deposition before the police, describes that when the prisoners came armed before Wuzeer Alee's house, Wuzeer Alee and the deceased turned out '*ghur se bahar aye.*' The prosecutors before this court are unable to explain away so fatal a contradiction; and under the circumstances thus viewed, there is every reason to believe the original information to have been the correct one. I therefore concur in the law officer's acquittal of wilful murder.

"A doubt has been raised as to Thakoor's (prisoner No. 5's) capability of wielding a *lattee*, from his having lost the use of his right hand. But it must be remembered that this is a weapon always used with both hands, and there was nothing the matter with his left hand, whilst all the witnesses depose to his having struck the deceased, and to his habitually working both plough and *moth*. Kunhye too, as already shown, names him before the police as having been present, and which Thakoor, the same day, could account for in no other manner than because it pleased Kunhye to say so. I do not, therefore, find sufficient grounds for discrediting the evidence generally, or for differing from the law officer's conviction of culpable homicide, in which I concur, as detailed therein. Yet even under this modified view, regarding the attack as an aggravated one, the prisoners have been sentenced as within."

Sentence passed by the lower court.—Nos. 4 to 7, seven (7) years' imprisonment, with labor and irons; Nos. 8 and 10, five (5) years' imprisonment, with labor and irons; and No. 9, four (4) years' imprisonment, and a fine of rupees fifty (50) or labor.

Remarks by the Nizamut Adawlut.—(Present: Mr. A. J. M. Mills.)—"The petition of appeal sets forth objections to the credibility of the evidence, arising from inconsistencies in the evidence of the witnesses. There are certainly contradictions in the details given by the witnesses, of the blows inflicted upon the deceased and Wuzeer Alee; but the evidence is full and clear to

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PRESENT:

J. R. COLVIN, Esq., Judge.

R. H. MYTTON, Esq., Officiating Judge.

SURROOPCHUNDER DOSS

versus

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November 29. Case of SREEMUNTO DOSS. CRIME CHARGED.—1st count, having on the night of the 10th October 1852, corresponding with 26th Assin 1259 B. S., committed a burglary in the house of the prosecutor, and stolen property valued at rupees 16-11-0; and 2nd count, wounding the prosecutor and his nephew, the witness Neelmony Doss, with a *scind-katee*.

Committing Officer, Mr. G. Bright, joint magistrate of Serampore, Hooghly.

Tried before Mr. J. S. Torrens, officiating sessions judge of Hooghly, on the 10th November 1852.

Remarks by the officiating sessions judge.—“The prosecutor, Surroopchunder Doss, is connected by marriage of his nephew with the prisoner's niece. Prisoner is charged with having committed burglary on prosecutor's dwelling on the night of the 10th October last, stealing therefrom property to the value of rupees 16-11-0, and wounding prosecutor and his nephew above-mentioned, Neelmony Doss (witness No. 1). Information was given to the darogah of thanna Singhoor, on the morning of the 11th, by Jadub, Chowkeedar of Sonka, bearing a report from the *phareedar* of Barooeparah, of that date, that the burglary had taken place on prosecutor's house on the preceding night, and Sreemunto, the prisoner, was arrested and let go; that prosecutor, his nephew, sister, and daughter, had all been wounded by prisoner with a *scind-katee*.

A prisoner convicted of burglary with wounding, in concurrence with the *futwa*, but in dissent from the sessions judge, his grounds for rejecting the evidence not appearing to be sufficient.

Sentence, five years' imprisonment, with labor and irons.

"The *phareedar*, after writing his report to the darogah, proceeded to prisoner's house, less than a half a *cos* off from Sonka, in the village Hereada, where he arrested him and surrounded his house preparatory to the search which was afterwards made by the darogah.

"When the darogah took deposition of prosecutor on the 11th, he stated that the articles noted in the margin had been stolen. The *scind-katee* with which the wounding is said to have been perpetrated, it is stated in the police depositions, was given by the prosecutor, Surroop-chunder Doss, to Sonatun Chowkeedar, on the morning of the 11th, prosecutor having found it after the occurrence; that it bore the marks of blood. A small basket with ornaments, and other articles, are stated in the police reports to have been found also on the following morning near prosecutor's house, in the field of one Mohun Doss, which prisoner had passed in his flight.

Two pewter plates.
Two brass pots.
Three earthen *ghee* pots.
One *dhotee*.
One piece of silk cloth,
Cotton *dhotee*.
Ornaments of prosecutor's daughter and of his nephew's wife.
Three small boxes of *sin-door*.

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"The residence of prosecutor is composed of four separate compartments, with an open square in the centre, usual in dwellings of the kind. He deposes before the sessions that he, his wife and younger nephew, were asleep in the eastern apartment, when about half-past 12 o'clock Neelmony called out to him from the western apartment, which he occupied along with his wife to come and seize the thief. He accordingly got up, and on going out found that Neelmony was struggling with the prisoner in the court or square of the house: he, prosecutor, joined in the struggle, and both attempted to seize the prisoner; that during this struggle, prisoner wounded prosecutor and witness Neelmony, by thrusts of the *scind-katee*, and then broke away. At this period witnesses Nos. 2, 3, 4, and 5, came up and recognized the prisoner making off. The articles stolen and pointed out were found near a tamarind tree the next morning; these, according to his deposition, do not correspond with the articles he stated to the police to have been stolen. Before the darogah he stated that his daughter and his sister were wounded by the prisoner, as well as himself and nephew Neelmony; that on the villagers coming up, he (the prisoner) had admitted his attempting the theft before them, and begged that they would let him off; during this, when in search for a rope to tie the prisoner, he had fled; and that there were other thieves.

"Neelmony (witness No. 1) deposes that he was asleep in the west apartment with his wife, when he was woke by his foot being trod on by the prisoner, who had entered the apartment through the hole he had cut in the wall; witness got up, called

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out, and seized him round the body, on which prisoner wounded him by thrusts of the *scind-katee*. When he seized the prisoner, he recognized who he was; that the door of the dwelling was shut by a bar across at the time of seizure, but that during the struggle betwixt witness and prisoner, the latter had opened it, and they both struggled on to the outside, when the prosecutor came, who was also wounded. The things stolen were so from the apartment where witness and his wife were sleeping. They consisted of metal plates, *lotahs*, *ghée* pots, and small boxes with *sindoor*. Before the magistrate, he states he was not aware what articles were stolen.

“Narain Pattro (witness No. 2) who resides close by, deposes to having heard the noise, and come to the prosecutor's residence; found Sreemunto, the prisoner, there; saw him wounding Neelmony; called out that he should be tied; prosecutor was at that time looking for a rope, when he saw that prisoner was attacking those who had seized him with the *scind-katee*; he (witness) ran away. The sister and daughter of prosecutor were also wounded.

“Petumber Pattro (witness No. 3), son of the last witness, states, he went at the same time with his father, on having heard the noise; on coming saw the prosecutor and prisoner struggling. Neelmony was looking for a rope; saw the wounds being inflicted on prosecutor by the prisoner. Prisoner in the struggle disengaged himself from the prosecutor and ran off, when doing so, witness saw him throw away the *scind-katee*.

“Witnesses No. 4, Bholanath Pal, No. 5, Koylash Pal and No. 6, Chidam Pal, depose to having gone on hearing the noise, seeing the struggle and wounding, and prisoner running away. Their evidence is vaguely given, and is marked with discrepancies such as in those of the other witnesses to the wounding.

“Denonath (witness No. 7) deposes to having gone on the morning of the 11th, and seen that four inmates of the dwelling were wounded, then going and arresting prisoner in his dwelling in Hereada. He describes the wounds as skin-deep, but that the prosecutor and witness were unable to accompany him in quest of the prisoner.

“Goluck Biswas and Tarachand Barrick were witnesses to the *sooruthal* by the darogah on the 11th October. They describe the four persons being wounded; that the wounds were skin-deep.

“Prisoner pleads ‘*not guilty*’; that he was at home on the night in question; that he has a quarrel with prosecutor owing to his not joining in a sect to which the rest of the family belonged.

“I am not of opinion that the evidence of the prosecutor and witnesses Nos. 1 to 6, is of sufficiently corroborative or trustworthy

character to convict the prisoner of the theft or of the wounding with which he is charged, and to which they severally depose. In the first place the discrepancy as to the articles stolen before the sessions, and at the thanna and magistracy, in the depositions of the prosecutor and witness No. 1, renders the evidence on this point most doubtful. The prisoner, by Neelmony Doss, (witness No. 1) is described as having been seized in his sleeping apartment when he was in the act of committing the theft; that they both struggled to the outside of the apartment; that in this struggle prisoner inflicted the wounds with the *scind-katee*, both on the person of witness and prosecutor, who had come to his assistance; that during this struggle he broke away from them and ran off.

"If the struggle was as sworn to, and the wounds inflicted, and the door of the house shut with a bar, it is impossible that prisoner, when seized by the witness, could have effected at the same time the opening of the door, the wounding, and the theft of the various articles mentioned at the thanna and now produced, as left where stated by him during his flight. Further, had the wounds been inflicted in the manner described, they certainly would not have been of the character given in the darogah's report, or what the marks on the person of prosecutor and witness No. 1 now exhibit. On the right shoulder of the prosecutor there is the mark of a scratch, also on the left elbow marks of skin-deep wounds; on the back and right shoulder of the witness No. 1 there are marks of skin-deep wounds, of the breadth of the sharp or chisel-like part of the *scind-katee*, which could not possibly have been inflicted by thrusts in a violent struggle, such as described in the evidence.

"There is also this discrepancy in the case, that the police reports and the evidence before the police represent four persons, inmates of the house, as having been wounded in the attack by the prisoner; but it is utterly impossible that he could have wounded all these four persons, and that the evidence as to his seizure by prosecutor and witness No. 1, the struggle with them, and their wounding could be at the same time true.

"I am constrained to say that I consider the joint magistrate's investigation as defective. The few questions which were put to the prosecutor and witnesses before him could not have enabled him to form a definite or correct conclusion in the case. The evidence of Jadub Chowkeedar and Denonath Chowkeedar should also have been taken, and some inquiry made as to the wounding of the sister and daughter of the prosecutor.

"The joint magistrate of Serampore should have had the wounded parties sent in for examination by the assistant surgeon, which has not been done, for the fact of the wounds being slight does not prevent the necessity, in a case of this kind, of such a measure, where the professional description of how and in what

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manner the wounds were inflicted must form so material a part of the evidence. The prisoner may have been seen at the prosecutor's house, though the evidence to this effect is defective and discrepant; but there is no proof, from such evidence as has been given, either that he committed the theft or of the wounding with which he is charged. I consider he should, consequently, be released; but the moulvees having pronounced by his *fatwa* that the charges are proved, I have to refer the case for orders of the superior court."

Remarks by the Nizamut Adawlut.—(Present: Messrs. J. R. Colvin and R. H. Mytton).—MR. R. H. MYTTON.—"The proof of the crime charged against the prisoner, *viz.* burglary with wounding, consists in the evidence of the prosecutor and his relative Neelmony, to recognition during their struggles in the court-yard by the light of the stars, and similar evidence of five of the neighbours attracted by the noise. The prisoner was named to the police immediately, and his recognition is recorded in the first report dated the day succeeding the burglary. The prisoner pleads an *alibi*, and ascribes the charge against him to enmity for not having intercourse with him as a relation. He is, according to the darogah, a man of bad character, and has once before been under examination for murder.

"The law officer has convicted the prisoner, but from his verdict the sessions judge dissents. In the 13th, 14th and 15th paragraphs of his letter, he has explained his reasons for dissent.

a "In the first place the discrepancy as to the articles stolen before the sessions and at the ~~thence~~ and magistracy, in the depositions of the prosecutor and witness No. 1, renders the evidence on this point most doubtful.

They are not in my opinion sufficient; I will proceed to notice them *seriatim*. a For convenience they are entered in the margin, with my comments opposite.

"The following are the articles stated by prosecutor to have been stolen:

To Darogah.

Two pewter plates.
Two brass *batees*.
Three earthen *ghee* pots.
One *dhotee*.
One *dhotee*.
Ornaments belonging to plain-
tiff's daughter, }
One old silk *saree*.
One *sindoor patee* with *sindoor* }
boxes, }

In Sessions Court.

Two *thals*.
Three *batees*.
Three pots of *ghee*.
One *dhotee*.
One plain cloth.
Tabees.
Mol.
One red *saree*.
Three *sarees*.

"The only discrepancy observable is in the number of *batees* and in the two last items. The lapse of a month between the two statements is sufficient to account for this trifling discrepancy.

In the evidence of Neelmony on this point, the only difference is that to the magistrate he said he did not know *all* the articles which were stolen, while in answer to the sessions judge he said in a general way that they consisted of *thals*, *lotahs*, *ghee* pots and small boxes with *sindoor*. This is, in fact, no discrepancy. The last deposition is quite consistent with the former.

b "The prisoner, by Neelmony Doss, (witness No. 1) is described as having been seized in his sleeping apartment when he was in the act of committing the theft; that they both struggled to the outside of the apartment; that in this struggle prisoner inflicted the wounds with the *scind-katee*, both on the person of witness and prosecutor, who had come to his assistance; that during this struggle he broke away from them and ran off.

"If the struggle was as sworn to, and the wounds inflicted, and the door of the house shut with a bar, it is impossible that prisoner, when seized by the witness, could have effected at the same time the opening of the door, the wounding, and the theft of the various articles mentioned at the thanna and now produced, as left where stated by him during his flight."

glary is never committed single-handed: some of his accomplices may be presumed to have thrown them down as worthless.

c "Further, had the wounds been inflicted in the manner described, they certainly would not have been of the character given in the darogah's report, or what the marks on the person of prosecutor and witness No. 1 now exhibit. On the right shoulder of the prosecutor there is the mark of a scratch, also on the left elbow marks of skin-deep wounds; on the back and right shoulder of the witness No. 1 there are marks of skin-deep wounds, of the breadth of the sharp or chisel-like part of the *scind-katee*, which could not possibly have been inflicted by thrusts in a violent struggle, such as described in the evidence."

d "There is also this discrepancy in the case, that the police reports and the evidence before the police represent four persons, inmates of the house, as having been wounded in the attack by the prisoner; but it is utterly impossible that

b "The witness being asked how he and the prisoner came out on the yard if the door was shut, answered, that the door was shut by a bar stuck into the palm-leaf wall, and that the prisoner opened it with his hand while struggling. There is nothing impossible in this: the explanation, moreover, appears more of a surmise than an assertion: such a fastening might have given way to the slightest push. It is not asserted or insinuated that the prisoner carried off the things which were found. A bur-

c "I see no reason to doubt the possibility of scratches being produced by a *scind-katee*. In the course of my experience, I have seen wounds of all degrees produced by a *scind-katee*.

d "I can see no impossibility in the prisoner's having scratched four persons when struggling with them. Two of them are females, and the part they took in the affair has not been declared, probably with a view to obviate the necessity of their appearing. If they were not wounded in this manner, their wounds are totally unaccounted for.

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he could have wounded all these four persons, and that the evidence as to his seizure by prosecutor and witness No. 1, the struggle with them, and their wounding could be at the same time true."

"The sessions judge has not stated what conclusion he has come to with regard to the occurrence, whether he considers the crime fictitious altogether, or the occurrence real, but the evidence to recognition false.

"The record does not suggest any doubt of the occurrence being other than real; indeed, it is highly improbable that four members of a family would wound themselves in order to support a charge of burglary.

"The recognition by No. 5, one of the witnesses, who was attracted to the spot by the noise, is not very satisfactory, but that of the prosecutor and his relative Neelmony and the other two witnesses, Nos. 4 and 6, is distinct and consistent. That part of the defence of the prisoner as to being elsewhere at the time of the occurrence is proved as *alibis* usually are proved in this country, but the asserted motive for charging him falsely is absurd.

"In my opinion the prisoner should be convicted and sentenced to five (5) years' imprisonment, with labor in irons.

"The sessions judge in his 17th paragraph has blamed the joint magistrate for not requiring the wounded persons to be sent in for the examination of the surgeon. It is not usual or desirable that persons, especially females, should be exposed to the harassment of attending the surgeon for examination of slight wounds such as those described in this case."

MR. J. R. COLYIN.—"I concur with Mr. Mytton in the opinion that there is no sufficient ground for doubting the direct evidence in this case. The facts regarding the recognition and seizure and escape of the prisoner, and the wounding of four persons in the house, were stated in the report made by the chowkeedar to the police on the forenoon after the occurrence.

"There is no reasonable ground for believing that the case could have been got up falsely, and though the wounds are all slighter than might have been expected from the use of a *scind-katee*, this is not a circumstance which would warrant the setting aside such strong evidence, supported by the facts of a burglary having been committed, and the wounds inflicted.

"I concur therefore in the conviction, and think the proposed sentence appropriate."

PRESENT:

J. R. COLVIN, Esq., *Judge.*

GOVERNMENT

versus

GUDYE, ALIAS GADOO JANA.

CRIME CHARGED.—1st count, dacoity with violence in the lodging-house of Omachurn Adit (Sircar on the part of Gungaram Dutt), at Toorka Bazar, within the jurisdiction of thanna Kadroyan, zillah Midnapore, and plundering therefrom cash and property, valued at Company's rupees 447-12-9; and 2nd count, being by profession a dacoit and attached to gangs of Keachuk dacoits.

CRIME ESTABLISHED.—Accomplice in the dacoity.

Committing Officer, Lieutenant C. H. Keighly, assistant general superintendent for the suppression of Thuggee and Dacoity, Midnapore.

Tried before Mr. W. Luke, sessions judge of Midnapore, on the 23rd September 1852.

Remarks by the sessions judge.—“The prisoner pleads ‘*not guilty*.’ He is charged with having committed a dacoity in the house of Omachurn Adit at Toorka Bazar, and second, with being a dacoit by profession. The witnesses Huree Patur and Mungul Jana, approvers, depose to the prisoner’s accompanying them as an accomplice in the robbery of Omachurn’s house, and their testimony is corroborated by the depositions they gave before the assistant superintendent for the suppression of dacoity, on the 20th and 23rd November 1848, respectively, when admitted as approvers. They likewise denounced him as a dacoit by profession, and related the particulars of other robberies, in which he (the prisoner) had been concerned with them, and as the prisoner was at large in 1848, there is no ground for supposing that his name with the most of others in the witness’ confession was inserted from malicious or collusive motives. Since however the confessions of the witnesses in 1848 are not corroborated in respect to the prisoner except in the instance of the dacoity of Toorka Bazar, he should, in regard to the second count in the charges, have the benefit of any doubt which that defect is calculated to create, though I think there can be no question that he is morally guilty of being a professional dacoit. In the particular instance of the Toorka Bazar dacoity, the evidence of his active participation in it, is, I think, clear and conclusive, and as it was attended with aggravating circumstances, inasmuch as a great deal of violence was used, and one of Omachurn’s servants was severely wounded, which placed his

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Sentence of imprisonment for ten years, in banishment, for accompliceship in a dacoity, committed by a gang of Keachuk dacoits, upheld by the Nizamut Adawlut.

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Remarks by the Nizamut Adawlut.—(Present: Mr. J. R. Colvin).—"The prisoner's appeal is on general allegations of ill-treatment after his apprehension, with a statement that his name was not mentioned in the original depositions of the approvers, Huree Patur and Mungul Jana. This statement is, however, quite groundless, for his name is found in the statements separately given by both the approvers in November 1848, as one of those engaged in the Toorka Bazar dacoity, though he was only apprehended on November 30th 1851, on a renewed search being made for the accused Keechuks, who had absconded, or had concealed themselves."

"I see no ground to doubt the propriety of the conviction and sentence."

PRESENT:

SIR R. BARLOW, BART., *Judge*.

BIRJOMOHUN DOSS, MUSST. ASURDA BEWAH AND GOVERNMENT

versus

SHEIKH SULLEEM (No. 1), SHEIKH FURREED (No. 2), SHEIKH BEPOTOOLLAH (No. 3), SHEIKH WOOLLEE MAHOMMED (No. 4), JIHAROO KHAN (No. 5), SHADEE KHAN (No. 6), JALAL KHAN (No. 7), SHEIKH NAZIR (No. 8) AND SHEIKH MONEER (No. 9).

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SHEIKH SUL-
LEEM and
others.

Prisoners were acquitted on account of the weakness of the evidence for the prosecution, although their defence was very unsatisfactory.

CRIME CHARGED.—1st count, Nos. 1 and 2, wilful murder of Shunkur Doss, and assault and wounding Birjomohun, prosecutor; 2nd count, Nos. 1 to 9, accomplices in the above crimes; and 3rd count, accessaries before and after the fact of the above crimes.

Committing Officer, Mr. R. Alexander, officiating magistrate of Mymensing.

Tried before Mr. R. E. Cunliffe, sessions judge of Mymensing, on the 30th September 1852.

Remarks by the sessions judge.—"The account given by the prosecutor and his witnesses is, that on the Wednesday preceding this occurrence, on Saturday, prisoner No. 1 had, when the prosecutor's rice field was nearly dry, dragged his boat through it, which led to a quarrel at the time with witness No. 6, prosecutor's servant; and that as the prosecutor and witness No. 6, were, early on the morning of the 17th July, about to proceed to make collections, and were standing at the side of the *jheel* near

the prosecutor's house, two boats full of men were seen coming rapidly towards them; they turned and were going to prosecutor's house, when the prisoners jumped out of the boats and began to assault the prosecutor, and on his calling out, the deceased and the eye-witnesses came, and the former tried to separate the parties; and while so doing, and while he was *standing*, No. 1 wounded him with a spear, from the effects of which he died almost immediately, falling into the water. The defence all along of the prisoners Nos. 1 to 4, the two former of whom are brothers, and the others their connexions, is, that a dispute about going over the prosecutor's field did take place, and that on the day in question the four prisoners were going in a boat to fish and saw the prosecutor's cows in No. 1's rice crop, on which they landed to drive them out and abused the prosecutor, who calling ~~out~~ a number of persons came, and they ran to their boat, which the deceased laid hold of and tried to prevent their escaping, and at the same time No. 1 was getting in; that Gungaram Doss, brother of witness No. 4, ran up and threw a spear at No. 1, which missed him and struck the deceased; and named a number of witnesses in support of this statement, who deposed in their favor.

"The evidence of the civil surgeon shows, that the wound, a penetrating one, entered on the right side of the neck and went to the left and *downwards* to the length of about five inches, and that the wound could not have been made with any long instrument while the deceased was standing. The *futwa* of the law officer rejects the evidence of the eye-witnesses, as they are the prosecutor's dependents, or otherwise connected with him, and because witnesses Nos. 1 and 2 have shown that no reliance could be placed on their statements, as they have denied being connected with Gungaram, the falsity of which is proved by the evidence of that person's own brother, witness No. 4, and because of its being so opposed to the evidence of the surgeon and the evident collusion of the police with the prosecutor, who made no inquiry after Gungaram; but would, from the purport of the defence of the prisoners and the evidence of their witnesses, convict on violent presumption, No. 1, of culpable homicide, and Nos. 2, 3 and 4, of aiding and abetting therein."

"Although I place no reliance on the evidence for the defence, I cannot concur in the *futwa* of the law officer, not considering the charge proved against the prisoners, although they may be the guilty parties, for the following reasons:—*First*, some time ago, I directed the magistrate to order the police invariably to take at once the evidence of the persons who brought a body to the thanna. They are generally likely to know something about the case, if not eye-witnesses, and I had found that in some cases where there was a deficiency of evidence, or it was altogether trumped-up, the evidence of the persons who brought the body

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had been taken after many days had been spent in the local inquiry. In this case, four of the eye-witnesses took the body to the thanna on the 17th, but their evidence was not taken then, and although the darogah reached the place early next day, he did nothing that day, and reports that he is inquiring after the criminals and witnesses; the former he managed to find the next day, but the evidence of none of the eye-witnesses was taken till the 22nd, and that of witness No. 6 not until the 24th: he at all events could have been produced at once, as he is prosecutor's servant; *secondly*, the prisoner No. 1 charged Gungaram Doss with having inflicted the wound, before any of the evidence for the prosecution had been taken, but the police took no steps whatever in regard to him, while the evidence of his brother, witness No. 4, shows that he had left the village the day before, he did not know where, and on returning two or three days after refused to tell him where he had been, which at least bears a suspicious appearance; *thirdly*, the evidence of the surgeon shows that the wound could not have been inflicted in the manner described by the prosecutor and his witnesses, while it is evident that it might have been inflicted while the deceased was stooping down to hold a boat, and that it was inflicted under such circumstances is supported by the admission of the prosecutor and the eye-witnesses that the deceased fell into the water.

"For the reasons above stated, I am of opinion that the prisoners ought to be acquitted."

Remarks by the Nizamut Adawlut.—(Present: Sir R. Barlow, Bart.)—"The sessions judge and law officer both distrust the evidence of the eye-witnesses, but the latter authority relies on the defence of the prisoners and the evidence of their witnesses as sufficient for conviction on violent presumption of No. 1, of capable homicide, and Nos. 2, 3 and 4, of aiding and abetting therein. The sessions judge rejects the evidence for the defence, and acquits the prisoners, for the reasons stated in paragraph 4 of his letter of reference.

"Considerable delay of four or five days was allowed to occur before the eye-witnesses, though present in the village where the police were holding the inquiry, were examined. The prosecutor had named the eye-witnesses at the thanna, and also charged the prisoners, but the darogah took no decisive measures in the matter, nor did he reduce to writing, as he ought to have done, what he had heard. The opinions of the sessions judge and law officer as to the value of the evidence for the prosecution are so strong, and they appear to place so little reliance on their being trustworthy, that I am not disposed to found a conviction upon the strength of them. The defence, though unsatisfactory, must not deprive the prisoners of the benefit of the weakness which is exhibited in the case for the prosecution. I acquit the prisoners. Let them be released."

PRESENT:

A. J. M. MILLS, Esq., *Officiating Judge.*

MUSST. SHUHABOO AND GOVERNMENT

versus

SHEIKH JAFER ALEE.

CRIME CHARGED.—1st count, wilful murder of Imam Khan, husband of Musst. Shuhaboo, prosecutrix; and 2nd count, severely beating the deceased with a *lattee*, from the effect of which he died three days after.

Committing Officer, Mr. F. C. Foyle, magistrate of Behar.

Tried before Mr. T. Sandys, sessions judge of Behar, on the 23rd August 1852.

Remarks by the sessions judge.—“The deceased, a resident of Gya, was a native oculist of considerable practice. The prisoner is a young profligate, who after squandering away in a disreputable manner such property as he succeeded to from his father, a wealthy chuprassee, has of late, on his own showing, been living on his wits as a candidate for public employ.

“Behary Singh (witness No. 14), chowkeedar of the division in which the deceased resided, being alarmed by sounds of lamentation issuing from the deceased's house on the 19th of July last, made inquiries at the house, and finding that the deceased was in a helpless state from injuries inflicted on him, reported the matter at the thanna.

“The deceased was taken to the hospital the same day in a speechless state, in which he lingered until he died the same day. The police inquest, as also Dr. Diaper's *post mortem* examination, prove that the deceased, with the exception of a few scratches, had only suffered from one mortally violent blow on the head that ‘had broken the upper part of the left temple bone into small fragments, which were driven in upon the brain, and this fracture extended in a simple form obliquely upwards across the frontal bone.’

“The prosecutrix, the deceased's wife, deposed on 20th July, that about 9 p.m., four days previously, Sheikh Wuzeer (witness No. 1) and Keramut Alee (witness No. 12), had brought the deceased home in a speechless state, when Wuzeer informed her that the prisoner had beaten her husband, who also confirmed it on coming to his senses, but was unable to tell her further particulars, and no information or complaint was made, consequent on the senseless state in which he continued.

“Wuzeer (witness No. 1), a person occasionally employed by the deceased, deposes that he accompanied the deceased in his stroll about the bazar on the evening of the 17th July last.

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The intention of the prisoner to kill the deceased, not being proved, he was convicted of culpable homicide.

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They had visited the mangoe market, then in profusion, and had been joined by Sheikh Jeeun (witness No. 2) and the prisoner, who, observing or knowing the deceased had money about him, asked him for rupees 2, which the deceased refusing, the prisoner left them dissatisfied. The other three continued their stroll, until, after some lapse of time, turning homewards, the deceased had taken leave of Jeeun, who had not however gone any distance, when the prisoner, following the deceased, felled him to the ground with one blow of a stick, and then ran away. Wuzeer, assisted by Keramut Alee (witness No. 12), carried the wounded man home.

" Sheikh Jeeun (witness No. 2) confirms all thus stated as regards himself, and swears to his having seen the prisoner strike the fatal blow, and then run away.

" Hoolas (witness No. 3) and Doolar (witness No. 4), who were sitting in shops close to where the event took place, depose to their having seen the prisoner pass by, suddenly strike the deceased down, and then run off. Khanoo (witness No. 11), Beharee (witness No. 15) and Jeeun Kahar (witness No. 16), also about the same place, indirectly confirm the occurrence having thus happened. Idoo (witness No. 10) confirms the state in which his master was brought home. Wahid Alee (witness No. 13) and Jodhee Kahar (witness No. 18) are but indifferent hearsay witnesses. Water was brought to revive the wounded man from Musst. Nundee (witness No. 17) prostitute's house, who says she was not then at home, but her friend Khanoo (witness No. 11) was, as deposed to by him.

" The prisoner has always pleaded '*not guilty*,' but without attempting to show either before the magistrate or this court how the deceased came by his brutal death-blow, yet before the police he called him a '*drunkard*' and '*there was no saying who might have beaten him*,' and both before the magistrate and this court he produced witnesses who swore that they saw the deceased accompanied by Wuzeer (witness No. 1) reeling home drunk together, when the deceased stumbling fell on his head; but such testimony is manifestly concocted, because both the position and severity of the fatal blow did not permit of its having happened in any such way; deposed to as '*impossible*' by Dr. Diaper. Before the magistrate the prisoner also urged that the '*deceased was his friend, why should he have assaulted him*,' though there is no evidence on record as to any intimacy between the two, beyond both being idle bazar loungers. He also set up an *alibi* supported by numerous witnesses to his having been present at a marriage, and both before the magistrate and this court accused the darogah, Keramut Alee, of having trumped-up the prosecution against him on account of old scores originating in his being the favored protector of two prostitutes, both

called Hosseinee, and he has adroitly enough given a coloring to such pretence by reference to various records in which those persons, the darogah and himself, were concerned. On reference to them, however, they do not show any particular malevolence on the darogah's part towards the prisoner, but rather the contrary, although I must at the same time observe I have had more than one occasion to notice this darogah's talents for invention.

"The *fatwa* of the law officer, acquitting the prisoner of wilful murder, yet setting aside the evidence of the prisoner's witnesses as untrustworthy, convicts him of the culpable homicide of the deceased, and declares him liable to punishment for the price of blood by *deeyut*.

"The prosecution in all its more aggravated details rests entirely on the testimony of the two eye-witnesses, Wuzeer (No. 1) and Jeeun (No. 2.) Were their evidence to be depended on, that the brutal and cowardly attack had originated in the deceased's refusal to comply with the prisoner's unwarrantable demand for money, then disappearing, and after a lapse of time, between 6 p. m. and 9 p. m., returning armed and following the unarmed deceased, suddenly and unawares strike him to the ground with one deadly blow, inflicted on his head, there would have been much in such a diabolical spirit of revenge, the period which had intervened, and his deliberately arming himself and following the deceased, to bring home to him *malice prepense*, and convict him of wilful murder. But to such extent I distrust the testimony of these two eye-witnesses. They palpably contradict each other on the material point itself in that case as to the cash the deceased had with him at the time, and the use he had made of it in their presence. Wuzeer (No. 1) before the police, and not until interrogated as to the origin of the occurrence, replied, 'that the deceased had some cash with him; perhaps the prisoner beat him coveting the money'. Adverse to this before this court he deposed that the deceased had rupees 6, with which he was safely conveyed home, and that he never made any purchases whilst he continued with him, which was necessarily for the whole time. Jeeun (witness No. 2) directly contradicts this, when he assigned as the only reason for the prisoner's demanding money of the deceased instead of himself, because he had no money about him whilst the deceased had, which he showed by pulling money out of his pocket and making purchases. The suppression of the prosecution for two days adds to these doubts; and it is quite possible circumstances may have preceded the attack, which the injured party and his family care not to make public. Thus viewed, and on such questionable testimony, I cannot convict the prisoner of wilful murder; but I find no reason to doubt the act itself, as corroborated by the

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testimony of so many witnesses, and which still leaves the crime of a very aggravated character. The defence too is as weak and worthless as the prisoner's character, which is also the law officer's opinion. I consider it established that the deceased was returning to his house unarmed through the streets where lights still continued burning, and that the prisoner following him unawares struck him a fatal* club-blow in the head, which must have at once rendered him helpless. Under such circumstances, there could not at the time have been any altercation between the two. This assassin-like assault, therefore, was as dastardly as there is thus every reason to infer its having been actuated by some vile revengeful motive. I convict the prisoner of aggravated culpable homicide, demanding punishment extending beyond the powers of this court, and thus occasioning this reference. I would recommend his being sentenced to fourteen (14) years' imprisonment, with labor in irons, and banishment."

Remarks by the Nizamut Adawlut.—(Present: Mr. A. J. M. Mills.)—"The evidence to the prisoner waylaying the deceased and felling him to the ground with the blow of a club and then running off is clear and strong. The deceased was brought home in a speechless state and died from the effect of the injuries he received on the third day evening.

"The *alibi* set up by the prisoner is not substantiated; indeed it is quite possible that he may have been present at the marriage, and yet have assaulted the deceased and returned to the place when the marriage ceremony was being performed: his further allegation that the deceased was drunk and fell upon his head, which caused his death, is manifestly unfounded. The evidence of the medical officer is conclusive on that point.

"I concur with the sessions judge in convicting the prisoner of culpable homicide, though not on the grounds upon which he has come to the conclusion that the homicide was not wilful.

"I see no reason for distrusting the evidence of the eye-witnesses as to the circumstances which led to the attack on the deceased. The prisoner and the deceased were idle bazar loungers; they were strolling through the bazar in the evening and the former asked the latter to give him rupees two (2), which he refused to do. On this the prisoner replied he would be revenged on him. There is nothing improbable in this account. The prisoner was annoyed at the refusal to comply with his demand and disappeared, intending, no doubt, to do the deceased some bodily harm, but I do not think it can be 'fairly' inferred from the circumstances of the case, (as required by

* "Dr. Diaper considers it probable that medical aid on the spot would have been of no avail."

our law,) that the prisoner was bent upon his destruction. The deceased was walking in company with two other persons. The blow was struck in the dark; the size of the weapon is not known. The evidence does not show that the blow was aimed at the head, though it alighted upon it and proved fatal, and there was no previous ill-will between the parties. The prisoner is entitled to the benefit of the doubt which these circumstances create, and I sentence him, convicting the prisoner of aggravated culpable homicide, to fourteen (14) years' imprisonment, with labor and irons, in banishment."

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Case of
SHEIKH
JAFER ALEE.

PRESENT:

J. R. COLVIN, Esq., Judge.

A. J. M. MILLS, Esq., Officiating Judge.

GOVERNMENT

versus

MUSST. AMOLWAH.

CRIME CHARGED.—Wilful murder.

Committing Officer, Mr. A. A. Swinton, magistrate of Shahabad.

1852.

Tried before Mr. W. Tayler, sessions judge of Shahabad, on the 9th September 1852.

November 30.

Remarks by the sessions judge.—"This is one of the most painful and distressing cases I have ever tried.

Case of
Musst. AMOL-
WAH.

"The ill-fated being before the court is charged with the wilful murder of her two children, five and two years old, and from the evidence there appears but little doubt of her guilt.

Capital sen-
tence on a
woman, who
was convicted
of having
thrown her
two young
children into
a well, where
they were
drowned.

"The facts of the case are briefly these:—

"On the 21st August, the chowkeedar of mouza Akhgoon, in pergunnah Arrah, reported at the thanna that the prisoner's two children had, while playing, fallen into a well and were drowned.

"On the same night the burkundauz brought the corpses of the children, and the prisoner, their mother, to the thanna. The deposition of the burkundauz and the woman was taken down by the mohurir, and the former, after detailing the circumstances, stated that he had heard the villagers say that the prisoner had thrown the children down the well, and he had therefore brought her.

"The woman's deposition was taken the next day by the mohurir on oath. She denied having thrown the children in, and stated that they had fallen into the well accidentally.

"On the 24th the darogah of Arrah reported that, knowing the well referred to to be considerably raised from the ground, he suspected the story of the children's accidental fall, and had

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therefore sent for one Resal Singh, the prisoner's brother-in-law, and heard from him that the night before the occurrence there had been a quarrel between the prisoner and his wife, who lives on the same premises, and that it was supposed that the prisoner had, in a rage, thrown her children down the well.

"The darogah then questioned the prisoner, and she confessed the deed, detailing what had happened, and stating that, on the morning after the quarrel with Resal Singh's wife, *when she woke, she felt so aggrieved that she took the children to the well and threw them down.*

"This confession she repeated before the magistrate, though with some modification; she recapitulated the narration of the quarrel and of her vexation, confessing that she first placed her ~~little~~ girl on the edge of the well, when she fell in, and afterwards her boy, who fell in also, she turning her head away; and on being asked why she did this, stating that her fate was broken and her heart suggested the deed.

"Before this court she pleaded '*not guilty.*'

"There were no eye-witnesses to the deed; but the fact of the quarrel, the departure of the prisoner with her two children at early dawn, her return home crying, and on being asked stating that she had killed her children, all these facts are fully established by the evidence, and the voluntary confession of the prisoner, both at the thanua and before the magistrate, clearly proved.

"The bodies were taken out of the well on the 21st with some difficulty, there being some ten or twelve feet of water in it at the time.

"The evidence of the civil surgeon shows that death was caused by drowning, and I can see no cause whatever to doubt the perpetration of this awful crime.

"The defence of the prisoner is that the children fell in by accident.

"The *futwa* convicts the prisoner of wilful murder, and declares her liable to *akoobut*, *kissas* being barred under the circumstances of the case.

"On a careful review of the facts of the case, I can see no extenuating circumstances to justify mitigation of punishment.

"The exasperation, arising from a quarrel with another woman, would be but a poor excuse for so foul and unnatural a murder, even had it been committed at the instant; but when it is considered that the woman had slept over the event, that she deliberately carried her unoffending children some distance to the well, and according to her own confession before the magistrate *placed them at intervals on the edge, and let them fall one by one into the depth below*, the deed can scarcely be surpassed in horror and atrocity.

"The only circumstance which in any way explains such incredible cruelty is mentioned by witness No. 13, Musst. Imriteah; the woman with whom she quarrelled.

"This witness, on being questioned regarding the prisoner's disposition said, that her mother had died of eating opium, and that it was supposed that when her spirit visited, (or as the witness described it mounted on her,) she was fierce and quarrelsome.

"This is only a vulgar way of accounting for the prisoner's fits of anger: and though the fact of her passionate and savage temper may account for the deed, they cannot of course mitigate the crime.

"I feel compelled, therefore, to recommend a capital sentence."

Remarks by the Nizamut Adawlut.—(Present: Messrs. J. B. Colvin and A. J. M. Mills.)—"There can be no reasonable ground whatever for doubting that the prisoner deliberately threw her two young children into a deep well where they were drowned. The expression used in her own statement in the first part of her confession to the magistrate is that she pushed them (*thel diya*) into the well. But whether she did this, or merely placed them on the parapet of the well so that they fell in, is immaterial. She acted under a feeling of sullen and passionate resentment or excitement in consequence of an altercation with her sister-in-law on the previous evening; but there is nothing in the circumstances which could be admitted as the slightest extenuation of her unnatural guilt.

"We convict the prisoner Musst. Amolwah of murder. and sentence her to suffer death."

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WAH.

SUMMARY CASE.

PRESENT :

J. R. COLVIN, Esq., Judge.

CAPTAIN J. W. L. BIRD

versus

HOSSEIN ALEE AND OTHERS.

CRIME CHARGED.—Plunder.

This case was referred by Mr. S. Bowring, sessions judge of Chittagong, with the following letter, No. 82, dated the 29th October 1852 :—

“ I have the honor herewith to forward, for the purpose of being laid before the court, the record of a case investigated by the magistrate on information laid by Captain Bird, of the 11th Regiment N. I.

“ The charge against the prisoners is, that the prosecutor's boat having been wrecked (possibly intentionally) the villagers carried off his property. The value is not stated; but many articles have been recovered, and the value of one only of these, a gun, is said to be rupees 303. The magistrate convicted forty persons of *loot-o-taraj*, and sentenced them to imprisonment and fine, in no case exceeding six (6) months, and rupees two hundred (200), or in default six (6) months further imprisonment, commuted to labor for another fine, and directed the seizure of the prisoners' property.

“ Against this sentence twenty-nine of the prisoners have appealed.

“ I purposely avoid entering upon the merits of the case; but it appears to me that the magistrate's order is altogether illegal, and under the precedent of *Bulleye Tumlee versus Choudam Khyra*, (Sudder Nizamut Reports for 1852, page 893,) beg to recommend that the conviction be quashed, and the magistrate directed, if he thinks fit, to commit the parties to the sessions.

“ It does not appear from the charge, or from the final *roobukaree* of the magistrate, that the prisoners assembled for any other purpose than robbery or theft; consequently the case does not come under the Circular Order, No. 3, of 9th March last. The Oordoo and Bengalee terms quoted in paragraph 3 of the above order would be totally inapplicable to the offence the prisoners are charged with.

“ The magistrate ought to have asked Captain Bird for a rough estimate of the value of the property plundered, but whatever this may be, as before stated, one article alone is worth more than rupees 300; consequently, looking at the act as one

1852.

November 26.

Case of
HOSSEIN ALEE
and others.

Where, in a case of plunder by a number of persons, there is no evidence of a concerted and conjoint plot among them for a common object, each is to be tried and punished separately for his own acts.

1852. of theft, the magistrate had no power, under Section IV. Regulation IV. of 1820, to dispose of the charge.

November 26. "The magistrate has not found the prisoners guilty of theft; but directs the police to attach the whole of their property; under what law is not stated, or what is to be done with the proceeds; supposing in other respects the judgment to be correct, this order seems altogether irregular and illegal.

Case of
HOSSEIN ALI
and others.

"I solicit early orders on the case, that I may either dispose of it myself, or, if it be left discretionary to the magistrate to commit for trial, this may be held before the detachment of troops leaves Chittagong."

Resolution of the Nizamut Adawlut, No. 1570, dated the 26th November 1852.—(Present: Mr. J. R. Colvin.)—"As the ~~case~~ here submitted appears to be regularly before the officiating sessions judge in appeal, he should dispose of it by his own authority. He is competent to quash any conviction by a magistrate in a case beyond his legal jurisdiction, and to point out that commitment is, in respect to it, the proper course of procedure.

"The Court observe, for his assistance, that it would seem that there was, in this instance, no concerted and conjoint plot among the plunderers to act together for one common object. Every man may probably have come to appropriate, and carry off, whatever he could for himself. Each must, in that event, be held responsible for what he himself did, and each is, consequently, punishable within the limits of a magistrate's authority, as for a misdemeanor, unless there be distinct evidence against him of carrying off property of a value, which, in a case strictly of theft, would take the charge out of the magistrate's competency."

PRESENT :

R. H. MYTTON, Esq., *Officiating Judge.*

GOVERNMENT

versus

SHEIKH EUÑOOS.

CRIME CHARGED.—1st count, ~~burglary~~ burglary in the house of Sheikh Roopun, on the 11th of September 1852, and stealing therefrom property to the value of rupees 2-6-0; and 2nd count, privy to the above crime.

CRIME ESTABLISHED.—Burglary and theft.

Committing Officer, Mr. W. B. Buckle, magistrate of Sylhet.

Tried before Mr. F. Skipwith, sessions judge of Sylhet, on the 7th October 1852.

Remarks by the sessions judge.—“The prisoner was apprehended at night in the house of the prosecutor, who discovered he had been robbed of property to the value of rupees 2 and upwards, and that his house had been burglariously entered.

“The prisoner on being seized said he had given the property to his associate, but no trace of him has been discovered,

“He pleaded ‘*not guilty*,’ but the evidence is conclusive against him. He was once before convicted of dacoity, and has been imprisoned for fourteen (14) years, with labor in irons, and was released in 1851.”

Sentence passed by the lower court.—Ten (10) years’ imprisonment, with labor in irons, in banishment.

Remarks by the Nizamut Adawlut.—(Present: Mr. R. H. Mytton).—“The prisoner in his petition of appeal states that he was on his road to Allipore to recover some money, and not seeing at night wandered into a house, where he was caught and wrongfully charged with burglary. This is contrary to his defence to the darogah and magistrate, in which he states, that he went to a bazar, where he was seized and asked to point out a lost boat, failing to do which, he was taxed with committing a fictitious burglary. I see no reason to interfere with the conviction and sentence. The appeal is rejected.”

1852.

December 1.

Case of
SHEIKH EU-
NŌOS.

Sentence of
ten years’ im-
prisonment
for burglary,
on a prisoner
lately released
from jail,
where he had
been confined
fourteen
years, on con-
viction of da-
coity, con-
firmed.

PRESENT:

SIR R. BARLOW, BART., }
 AND } *Judges.*
 W. B. JACKSON, ESQ., }

GOVERNMENT AND BISHEN ROY

"versus

MUNGLE ROY.

CRIME CHARGED.—Wilful murder of Musst. Sunjheea.

Committing Officer, Mr. A. Hope, officiating magistrate of Monghyr, Bhaugulpore.

1852.

December 1.

Case of
MUNGLE ROY.

The original commitment of the prisoner for culpable homicide being, on reference of his case for the court's sentence, quashed, as it was considered that he should have been tried for wilful murder, he was, on subsequent trial on that charge, convicted and sentenced capitally.

Tried before Mr. R. N. Farquharson, sessions judge of Bhaugulpore, on the 1st October 1852.

Remarks by the sessions judge.—“This case was first committed as culpable homicide and reported to the Nizamut, on the 26th of April 1852.

“The proceedings were quashed* and order made to put the prisoner on his trial for murder, which was done, but the proceedings were again quashed† for informality.

* *Vide Court's Resolutions Nos. 690 and 1082 of the 25th May and 7th August 1852, respectively.*

† *Extract from the Resolution of the Nizamut Adawlut, No. 690, dated the 25th May 1852.*

“The court, having perused the papers above recorded, are of opinion that the prisoner Mungle Roy ought to have been committed on a charge of murder. They therefore cancel the proceedings connected with his commitment and trial, and direct that the sessions judge cause the prisoner Mungle Roy to be committed on a charge of murder. The sessions judge will proceed on the new trial, on that charge in the usual course.”

Extract from the Resolution of the Nizamut Adawlut, No. 1082, dated the 7th August 1852.

“The court, having perused the papers above recorded, connected with the case of Mungle Roy, observe that the proceedings held on the charge of murder are in themselves useless and incomplete. The sessions judge has not taken the examination of the witnesses afresh, but has simply sworn them to their former depositions in the former commitment and trial on the charge of culpable homicide, and has put up their former depositions with the new trial. This is irregular, and renders the proceeding useless. The trial on the charge of murder must be complete in itself, and without reference to the former proceedings. The prosecutor and all the witnesses must be examined over again on the charge of murder as to the fact in detail, and the defence taken to the new depositions. The old trial, commitment, and depositions have been quashed, and are now of no use, and cannot be received as evidence in the new trial on a different charge. The court direct, therefore, that the proceedings be again returned to the sessions judge, with instructions to hold the trial with reference to the above orders and not to mix up the proceedings on the former trial with the proceedings on the present charge of murder. The judgment of the sessions judge must be on the new depositions exclusive.”

"The prisoner being again put on his trial on the 30th September last, for the murder of Musst. Sunjheea, pleads 'not guilty.'

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Case of
MUNGLE ROY.

"Musst. Sunjheea, deceased, the niece of Bishen Roy, prosecutor, a young married woman, about fifteen years of age, went in company with four other women, Peereeah (No. 4), Bhooteeah (No. 2), Munglee (No. 1) and Jhuneeah (No. 3), into the Mudookole Jungle, about half a mile from her house, in the village of Jhurna, to gather the leaves of the Saul tree (which when sewn together are largely used as plates by the common people). Towards evening, when they were returning home with loads of leaves on their heads, the prisoner Mungle Roy suddenly rushed out of the jungle, and seizing Sunjheea by the hands, threw her down and endeavoured to ravish her, which she resisted; he then dragged her a short way into the jungle, where, on the resistance being continued, he struck her several blows with a *lattee*. The women with her had from the first remonstrated with prisoner, and he struck one of them also (Musst. Peereeah) with his *lattee*. They followed him when he dragged Musst. Sunjheea into the jungle, and were close by when he struck her the heavy blows on the head. Attracted by their cries, three men, Napoor, Dokhun and Horil, who were cutting wood in the forest, came up and saw Mungle Roy making off, with his *lattee* in his hand. They called out to him to stop, and that they knew him, but he made off.

"Musst. Sunjheea was taken home insensible and died next morning. Her body was examined by the civil surgeon, whose evidence, sworn to before me, proves that death was caused by the blows of some heavy blunt instrument, such as the *lattee* produced in the magistrate's court (but not forthcoming at the sessions). The prisoner, Mungle Roy, was apprehended at the house of one Sono Motya, but in his own village of Khyra, the second day after the murder. Jeeto (witness No. 8) deposes to there being marks of blood on his (prisoner's) *gumcha* when apprehended.

"Prisoner endeavours to prove an *alibi*, but his story is altogether incredible, and the evidence adduced in support of it is vague and contradictory.

"Witnesses Nos. 2 and 4, and 5 and 7, were all previously acquainted with prisoner, and swear to his identity with the man who attacked Musst. Sunjheea, and was seen running away from the spot where she lay weltering in her blood. Witnesses to the fact, Nos. 1, 3 and 6, were, for reasons remarked in the calendar, not forthcoming at the sessions. The evidence of those who were present, is conclusive of the guilt of prisoner; against whom it is further proved that he had before made attempts on

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Case of
MUNGLE ROY.

the person of Musst. Sunjheea, which were frustrated only by her superior activity.

"The law officer gives a *futwa* of 'culpable homicide,' rendering the prisoner liable to punishment by *deeyut*; but the crime is evidently murder, of which I would convict the prisoner; recommending, however, that with reference to the absence of positive proof of murderous intent, and the nature of the weapon used on the occasion, which is described as a plain unloaded bamboo *lattee* of the usual dimensions, he be spared the extreme penalty of the law and sentence passed for transportation beyond seas for life."

Remarks by the Nizamut Adawlut.—(Present: Sir R. Barlow, Bart., and Mr. W. B. Jackson.)—MR. W. B. JACKSON.—"It is proved that the prisoner Mungle seized Musst. Sunjheea, a girl of about fourteen years of age, when she was carrying away a bundle of leaves, and dragged her down and wanted to have criminal connexion with her; she refused, when prisoner struck her on the head with a *lattee* and knocked her down; he then struck her two or more times with the *lattee*, using both hands; the girl never spoke afterwards, but was carried home, and died next morning. On examination it appeared that she had suffered a compound fracture of her skull; the prisoner had before attempted to have connexion with her, when she escaped by running away. I would convict the prisoner Mungle Roy of murder.

"The sessions judge recommends a sentence of imprisonment for life in consideration of the weapon used. I presume he means that as the prisoner used a *lattee*, he did not intend to kill the deceased. It is plain to me that as he struck a child of fourteen years old twice on the head with a *lattee*, used with both hands, and struck her repeatedly with the same *lattee* after he had knocked her down with it, and simply because she would not commit adultery with him, he must be held responsible for the natural consequence of his act, the fracture of the girl's skull and her consequent death; in fact the prisoner's act appears to me to be a murder of a peculiarly atrocious kind, and I would therefore sentence him to suffer death."

SIR R. BARLOW, BART.—"This is clearly a most cruel case, and the prisoner should have been originally charged with wilful murder, but he was committed for culpable homicide only, and convicted on the minor charge by the sessions judge, who, with reference to the aggravated circumstances, declined passing sentence upon the prisoner himself and recommended the 'severest punishment next to a capital sentence.'

"The case was submitted by the presiding judge, Mr. Jackson, to the court at large, and a majority of the judges sanctioned

the quashing of the proceedings of the court below and decided that a recommitment and new trial on the charge of murder should be made.

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"Mr. Jackson accordingly cancelled the commitment on culpable homicide, and directed the prisoner to be tried on a charge of wilful murder.

Case of
MUNGLE ROY.

"The prisoner has now been convicted of wilful murder by the sessions judge, who recommends that he should be transported for life; and Mr. Jackson, before whom the case was laid, has, concurring with the sessions judge's finding, sent on the trial for another voice. He would pass capital sentence upon the prisoner.

"Under the construction of the law as ruled by the majority of the court in this and another case, Rujjub Alee and others, ~~also~~ from Bhaugulpore, the prisoner, though sent up for minor punishment on the minor charge and convicted of culpable homicide, has been tried on the major, wilful murder, by order of the court, and, on conviction, has been declared liable to sentence of death.

"In the case of Rujjub Alee and others; I held that by our law, Act XXXI. of 1841, this court was not competent to direct commitment on the graver charge, and dissented, for the reason stated in my minute on that record, from the principle laid down by the majority of the court, whose ruling, however, is now binding, and must guide the court's proceedings. This murder is one of peculiar atrocity. I therefore, considering the crime fully established, concur in passing capital sentence on the prisoner."

PRESENT :

R. H. MYTTON, Esq., *Officiating Judge.*

GUNGANARAIN BUNDAPUDHYA

*versus*BHOYRUB LOHAR (No. 26), LUKHICANT LOHAR
TABEDAR (No. 27), RAM TELEE (No. 28), BHOBANI
TOONG (No. 29) AND GOROOCHURN TELEE (No. 30).

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Case of
BHOYRUB LOHAR
and
others.

Crime da-
coity. Sen-
tence of six-
teen and four-
teen years'
imprisonment
confirmed a-
gainst certain
prisoners,
held to be
rightly con-
victed, but re-
duced to one
year's impris-
onment as a-
gainst one
prisoner, a-
gainst whom
the proof on
record is held
to be establish-
ed only privily
after the fact.

CRIME CHARGED.—1st count, Nos. 26 to 30, dacoity on the night of the 28th March 1852, corresponding with the 16th Cheyt 1258, in the house of the prosecutor, and plundering therefrom property of the value of rupees 259-4-0; 2nd count, belonging to a gang of dacoits; 3rd count, Nos. 26 and 27, knowingly receiving and having in their possession property obtained by the above dacoity.

CRIME ESTABLISHED.—Nos. 26 to 30, dacoity in the house of the prosecutor, and plundering therefrom property of the value of rupees 259-4-0.

Committing Officer, Baboo Jogesh Chunder Ghose, deputy magistrate of Ghurbettah, West Burdwan.

Tried before Mr. P. Taylor, sessions judge of West Burdwan, on the 26th August 1852.

Remarks by the sessions judge.—“This dacoity was marked by no peculiar circumstances. The band of robbers appeared to have been large, and some of them carried swords, but no violence was committed. The various rooms or huts, in which the prosecutor and his family dwelt, had, strange to say, no doors, and yet the property contained in them was of considerable value. Such is the apathy of the natives of this part of Bengal!

“The chowkeedar and ghatwal of the village, witnesses Nos. 1 and 14, were not, apparently, on the watch when the dacoity occurred, as they ought to have been, but they followed up the robbers next morning, with considerable tact and energy.

“The two first captured, *viz.*, prisoner No. 26 and another, named Nobeen Lohar, who subsequently escaped, were found at a place in the jungle called Theelasole, where there were only three huts, two of which were inhabited by the said prisoners.

“The chowkeedar and ghatwal, who were accompanied and supported by witnesses Nos. 15 and 16, first mentioned the dacoity and pointed out the foot-marks to the prisoners, and on their appearing confused, taxed them with the crime, when they confessed it and were taken into custody. These two prisoners, subsequently, pointed out all the property and their accomplices, but Nobeen succeeded in escaping, just as the chowkeedar and ghatwal and their party, were approaching the prosecutor's village, on their return from Theelasole,

"All the prisoners confessed at the thanna; and Nos. 26, 27 and 28, before the deputy magistrate. All, however, pleaded 'not guilty' before the sessions court.

"No. 29 began to confess before the deputy magistrate, but suddenly changed his mind, and, after denying the crime, said that his Mofussil confession had been extorted from him by violence.

"Each of the prisoners who confessed mentioned the others, with the exception of No. 26, who declared that he had merely heard of the dacoity, and seen Nobeen secrete the stolen property after it had taken place, but did not know the names of his accomplices.

"The apprehension of the prisoners, the *sooruthal*, the confessions, and the discovery and identification of the property were all fully proven by the witnesses named under the relative heads, in the calendar.

"The defence of the prisoners was quite futile, and the two witnesses, named by them, knew nothing whatever in their favor.

"Considering the evidence against all the prisoners full and satisfactory, I convicted them of the crime charged, and punished them as noted."

Sentence passed by the lower court.—No. 27, twelve (12) years' imprisonment, with labor in irons, in banishment, and two (2) years' in lieu of stripes also with labor in irons, and two years more in consequence of his being a *ghatwal*, total, sixteen (16) years' imprisonment, with labor in irons, in banishment, and Nos. 26, 28, 29 and 30, each twelve (12) years' imprisonment, with labor in irons, in banishment, and two (2) years more in lieu of stripes, total, fourteen (14) years' imprisonment, with labor in irons, in banishment.

Remarks by the Nizamut Adawlut.—(Present: Mr. R. H. Mytton).—"With the exception of the prisoner Bhoirub, the appeal of the prisoners is grounded on an assertion that their confessions were extorted from them. The contrary is proved to be the fact. Their appeal is therefore rejected.

"Bhoirub pleads that he did not confess participation in the dacoity, and that instead of being convicted of that crime, he is deserving of reward for pointing out where the plundered property was concealed. On referring to his confessions, I find that they only contain an admission of seeing Nobeen conceal the property. It is not apparent on what proof the sessions judge relied for a conviction of this prisoner on the charge of dacoity. The confession only establishes privacy after the fact, and no other proof is alluded to or to be found. The conviction of the sessions judge of this prisoner is therefore altered, and the sentence reduced to one (1) year's imprisonment, and fifty (50) rupees fine, commutable, on non-payment within a fortnight, to labor."

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December 1.

Case of
BHOIRUB LO-
HAR and
others.

PRESENT :

R. H. MYTTON, Esq., *Officiating Judge.*

KHUNJUNEE AORUT

versus

GOOEAH SHEIKH.

1852.

December 1.

Case of
GOORAH
SHEIKH.

Crime, culpable homicide. Sentence of two years' imprisonment, on the prisoner, who killed his wife in a sudden fit of anger, by a blow on the head with a twine reel, which he had in his hand, confirmed.

CRIME CHARGE.—1st count, wilful murder of his wife, Puchee Aorut; 2nd count, culpable-homicide of the said Puchee Aorut.

CRIME ESTABLISHED.—Culpable homicide. Committing Officer, Mr. R. H. Russell, officiating joint magistrate of Bograh, Rungpore.

Tried before Mr. T. Wyatt, sessions judge of Rungpore, on the 12th July 1852.

Remarks by the sessions judge.—"From the statement of the prosecutor (the mother of the deceased), the confessions of the prisoner and the evidence adduced, it is proved that the prisoner intending to go out to cultivate his lands, on a Sunday, in April last, asked his wife, Puchee Aorut (not more than ten or eleven years of age), to bring his *mathaeel* (a kind of hat made of basket-work to shelter the head from the sun) and his *pansun* (hoe), which not having done, he got angry, and intending to strike her on the back with a *pat-takoor* (reel) he had in his hand at the time, the blow fell on her head, causing her to fall insensible, and the wound to bleed, from the effects of which wound, after lingering for five days, she died.

"The prisoner pleaded '*guilty*' to the second count. There was no eye-witness to the fact. The prisoner voluntarily confessed in the Mofussil and foudaree, that having wanted his *mathaeel* and hoe, which his wife did not bring him, he gave her a blow on the head with a reel that was in his hand at the time, intending to hit her only on the back.

"The medical officer deposed that he found a circular contused wound on the scalp, over the left side of the frontal bone; that a nearly-circular piece of the bone had been partly driven into the head, which, on opening, he found the covering membrane of the brain torn, and that a part of the brain itself, in nearly a fluid state, had passed through the opening in the skull. He saw no other mark of violence on the body, which had gone far in decomposition. He had no doubt that this wound caused the death of the deceased.

"In his defence, the prisoner admitted what he had done in his confessions as to having struck his wife on the head with a reel intending only to hit her on the back; but that she worked for three days after; that on the Wednesday following, her grand-mother took her away to her mother's, the day after which,

the deceased's mother came and told him that his wife was very ill; whence he went to her, taking a doctor with him; after which he brought her home and attended on her, but she died on the Saturday morning, prisoner considering that she had died from illness.

"The jury found the prisoner '*guilty*' of the second count, in whose verdict I concurred."

Sentence passed by the lower court.—Two (2) years' imprisonment, without irons, and a fine of rupees twenty (20) or labor.

Remarks by the Nizamut Adawlut.—(Present: Mr. R. H. Mytton).—"The prisoner in appeal pleads that he did not strike the deceased on the head, and she did not die of the wound, but of a fever. The record establishes the falsity of this plea. The appeal is rejected."

1852.

December 1.

Case of
GOORAH
SHEIKH.

PRESENT:

A. J. M. MILLS, Esq., *Officiating Judge*.

BIJUN RAJWAR, MUNDUL

versus

MOHUN NAIK (No. 16), GOORAI NAIK (No. 17),
RADHOO NAIK (No. 18), JELASORE NAIK (No. 19),
MOTERAM NAIK (No. 20), BHOLANATH NAIK
(No. 21), KASHEE NAIK (No. 22), NOBOO, ALIAS
NOBIN NAIK (No. 23), DHEEROO NAIK (No. 24),
SONATUN NAIK (No. 25), SREEMUTTY ISSUREE
(No. 26), SAHIB NAIK (No. 27), BUNMALEE NAIK
(No. 28), ASSAREE NAIK (No. 29), MUSST. DASSEE
(No. 30) AND MUDDUN NAIK (No. 31).

CRIME CHARGED.—1st count, Nos. 16 to 31, dacoity in the house of the prosecutor and plundering therefrom property to the value of rupees 37-15-3; 2nd count, aiding and abetting in the same; 3rd count, No. 16, knowingly having in his possession property acquired by the said dacoity.

CRIME ESTABLISHED.—Nos. 16 to 31, dacoity and aiding and abetting in it; and No. 16, knowingly having plundered property in his possession.

Committing Officer, Moulvee Gholam Sufdar, law officer, exercising powers of a magistrate, Midnapore.

Tried before Mr. W. Luke, sessions judge of Midnapore, on the 13th July 1852.

Remarks by the sessions judge.—"The prosecutor's house was burglariously entered on the night of the 27th May by a gang of armed dacoits, who robbed it of property to the value of rupees 37-15-3. The prosecutor, assisted by the village police,

1852.

December 2.

Case of
MOHUN NAIK
and others.

The prisoners in appeal denied their confessions; but these having been duly proved, their conviction and sentence were affirmed.

1852.

December 2.

Case of
MOHUN NAIK
and others.

followed up the robbers, and succeeded in arresting the prisoner Mohun Naik (No. 16) with some of the stolen property in his possession. His accomplices threw away the articles they were carrying and fled. The prisoner Mohun confessed and implicated nineteen or twenty persons, including the prisoners Nos. 17 to 31; and they were immediately arrested by the phareedar of a neighbouring police chowkee, and all confessed before the darogah, and repeated their confession before the magistrate.

"In this court they plead '*not guilty*,' with the exception of Mohun Naik (No. 16); the guilt of all the prisoners rests entirely on their confessions. These are consistent, probable, and corroborated by the evidence for the prosecution and the defence set up. The prisoners are guilty on the strongest presumption of the charges on which they are arraigned, and are accordingly sentenced as indicated in the statement."

Sentence passed by the lower court.—Nos. 16 to 25, 27 to 29 and 31, each seven (7) years' imprisonment, with labor in irons, and Nos. 26 and 30, each, seven (7) years' imprisonment, with labor suitable to their sex, all to pay a fine of rupees twenty-four and four pie (24-0-4,) under Act XVI. of 1850.

Remarks by the Nizamut Adawlut.—(Present: Mr. A. J. M. Mills).—"The prisoners Nos. 16 and 19 to 26, both inclusive, and No. 30 have appealed. They plead that their Mofussil confessions were extorted from them and they acknowledged their guilt before the magistrate under the influence of fear; but this allegation is entirely unsupported. The confessions are duly proved. The prisoners, two of whom are women, reside in the jungles; grain was the object of plunder, and no doubt the want of food, caused by the failure of the crops in that part of the country, impelled them, as they state, to commit this robbery. I see no reason to interfere with the conviction and sentence."

PRESENT :

W. B. JACKSON, Esq., *Judge.*

TORUL ROY AND GOVERNMENT

versus

JHUMMUN (No. 1), BECHOO (No. 2) AND PAHLOO (No. 3).

CRIME CHARGED.—1st count, Nos. 1 to 3, wilful murder of Gujraj Roy, during an attempt to steal mangoes from the garden of the deceased; 2nd count, wilful murder of Gujraj Roy, and theft of a *dhotee* and *khendhara*, property of the deceased, valued at rupees 1-8-0; and, 3rd count, No. 1, having in his possession a *dhotee* and *khendhara* knowing at the time the same to have been obtained by theft, attended with the murder of Gujraj Roy.

Committing Officer, Mr. A. Hope, officiating magistrate of Monghyr, Bhaugulpore.

Tried before Mr. R. N. Farquharson, sessions judge of Bhaugulpore, on the 11th October 1852.

Remarks by the sessions judge.—“The prisoners all plead ‘not guilty.’”

“It appears on evidence that on the night of Thursday, the 3rd of June, Torul Roy, prosecutor, and the deceased Gujraj, his uncle, were on a *muchan*, watching mangoes in a tope belonging to the latter. About midnight the three prisoners with others (in all some twelve men) came to steal the fruit. Torul descended from the *muchan* and remonstrated with them, when they attacked him with *lattees*, and he ran away. They then attacked Gujraj Roy, who had also descended from the *muchan*, and beat him with their *lattees*, breaking both bones of both his legs just above the ankle joint; which injuries eventually caused his death within two months from their infliction. Torul Roy, on being attacked by the three prisoners, as above described, ran off to the westward, towards two other men, Jeetun and Domun, who were watching mangoes in another part of the same tope. These three, Torul, Jeetun and Domun, concealed themselves behind trees and saw Gujraj beaten by Jhummun, Bechoo and Puhloo. It was a clear moonlight night, and all the three prisoners were previously well-known to the witnesses, who were concealed within fifteen or twenty paces of them.

“In Torul prosecutor’s evidence, there is this discrepancy. In the magistrate’s court, he deposes to having ran off to the village, a *cos*s distant, and brought back with him some of the villagers, on whose approach prisoners made off. Before this court he swears to having run only a short distance, to where

1852.

December 3.

Case of JHUMMUN and others.

The prisoners were sentenced to transportation for life, for beating the deceased, whose mango garden they were engaged in robbing at the time, so severely as ultimately to result in his death.

1852.

December 3.

Case of
JHUMMUN and
others.

witnesses Nos. 1 and 2 were watching their mangoes, and to this story, on the discrepancy being pointed out to him, he adheres.

"Deceased Gujraj in his evidence on oath before the magistrate, taken in the hospital on the 11th June 1852, states very much as above,—that Torul first descended from the *muchan* on which they were watching; that he was set on by four men, and ran away; then he, Gujraj, descended and was beaten, and his legs broken as described.

"Prisoners were apprehended on the third day after the occurrence, Nos. 2 and 3 in their own houses, and No. 1 in the house of Alum Moosuhur, with the stolen goods, *viz.*, the *dhotee* and *gumcha*, which were clearly proved to have belonged to Gujraj. There were four men apprehended, but Alum, in whose house Jhummun was found, was released by the magistrate, there being no proof against him.

"All three prisoners deny the charge. Jhummun and Bechoo, (Nos. 1 and 2) are brothers, and state that their father died on the night in question, and they sat up with the body the whole night, the next Saturday they were apprehended; they say the charge is brought against them through enmity. Puhloo says he sat up with them watching the body of their dead father. There are no witnesses to the defence.

"The jury bring in a verdict of culpable homicide against all three prisoners.

"I consider, however, the crime of murder established against them. They were robbing the orchard of deceased, when, on his endeavouring to prevent them, they made an attack on his person, striking him across the legs, probably as much to avoid fatal consequences as to prevent pursuit. The injuries they then inflicted caused the death of their victim; and though the weapons used were not found, it may be inferred from the medical evidence, that they were heavy clubs; further, that the legs were broken by repeated blows evincing the savage nature of the attack, and corroborating the evidence of the eye-witnesses as to all the prisoners being equally concerned in the assault; I would recommend, however, in the absence of distinct proof of murderous intent, that the prisoners Jhummun, Bechoo and Puhloo, be sentenced to imprisonment for life, with labor and irons."

Remarks by the Nizamut Adawlut.—(Present: Mr. W. B. Jackson).—"It is proved that the prosecutor and deceased were watching their mangoes on a moonlight night, when they saw several persons come to steal mangoes. The prosecutor called out to them and they beat him, when he ran away. The deceased then came down from the *muchan*, and the thieves beat him and broke both his legs; he died of this injury about a

month after. The prosecutor and deceased recognized the three prisoners Jhummun, Bechoo and Publoo, as the persons who beat the deceased with *lattees*, and broke his legs. They also stole some clothes from his person, which were found afterwards in Jhummun's house under his pillow. I convict the prisoners Jhummun, Bechoo and Publoo of the murder of deceased, and sentence them all to be transported for life, with labor and irons."

1852.

December 3.
Case of
JHUMMUN and
others.

PRESENT :

W. B. JACKSON, Esq., Judge.

GOVERNMENT

versus

KAROO (No. 1), AMEER ALEE (No. 2), TEG ALEE (No. 3), AMJAD ALEE (No. 4), MUCKDOOMFUX (No. 5), FUQEEROOLLAH (No. 6), MEER MEERUN (No. 7), MEER MEEAH (No. 8), EKRAM (No. 9), HUSSEIN ALEE (No. 10), PEERUN (No. 11) AND NUCKTOO (No. 12).

CRIME CHARGED.—Affray attended with culpable homicide of Bocha Khan, deceased, and wounding.

CRIME ESTABLISHED.—Affray attended with culpable homicide and wounding.

Committing Officer, Mr. A. E. Russell, officiating magistrate of Purneah.

Tried before Mr. F. Lowth, sessions judge of Purneah, on the 13th September 1852.

Remarks by the sessions judge.—“ All the prisoners with the exception of Karoo (No. 1) pleaded ‘ *not guilty*.’

“ This was a case of affray, in which the prisoners Nos. 1 to 6, servants of Mr. A. J. Forbes, zemindar of pergunnah Sooltanpore, an indigo factor, on the one side, and the prisoners Nos. 8 to 12, being either servants or relatives of the prisoner No. 7, on the other side, were engaged, and in which Bocha Khan, a servant of the latter party, was killed, and the prisoner Nucktoo, (No. 12) was wounded. It appeared that for several months previous to this occurrence disputes relative to some land, which Mr. Forbes claimed as *malgozaree*, and the prisoner Meerun declared to be his *milik* property, had taken place, and that the zemindar had deputed a jemadar, by name Shooobuns Roy, and several peadas to the village Burgatchee, where Meerun and his party resided, for the ostensible purpose of collecting rents, but evidently, as the result has shown, for enforcing compliance with his demand relative to the land in question. It appeared also

1852.

December 4.

Case of
KAROO and
others.

Both parties to the affray were convicted and punished, the one for assaulting the other party going to serve legal process, and that party for accompanying the service with hostile demonstrations.

1852.

December 4.

Case of
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from the evidence of several witnesses and Munnoo, peada of the foudaree court, witness No. 2, that in a case of assault preferred by one Hedee, *alias* Hidayutoollah, the said peada had gone to the village in question for the purpose of arresting the prisoners Nos. 7 to 12, and on the day in question, 30th July 1852, or 16th Sawun 1259 B. S., had taken with him from Hedee's house the prisoners Nos. 1 to 6, to point out the parties, and aid him in effecting their apprehension. The evidence on the one side shows that on the peada and his party approaching Meerun's house, the several persons noted in the summons were discovered at a short distance off, and on the peada attempting to carry out the orders for their arrest, the prisoners Nos. 7 to 12 retreated, refusing to give themselves up, and shortly after, with the deceased and several others, sallied forth armed with *lattees* and attacked the prisoners Nos. 1 to 6, and drove them from the scene of action. On the other side several witnesses declared the prisoners Nos. 1 to 6, to have come with a large body of men armed with sticks and swords, and to have attacked the prisoners Nos. 7 to 12, and that in the affray Nucktoo was wounded, and Bocha Khan so severely wounded, on the back part of one thigh, with a sword, that he died a few days afterwards. As usual in cases of this nature the witnesses endeavoured by their evidence to screen their friends on either side from the charge of being the aggressors; but there could be no doubt of the fact of the prisoners Nos. 1 to 6 having been the originators of the affray, and that they took advantage of the presence of the foudaree court peada to attack and maltreat the opposite party. The evidence also clearly shows the prisoner No. 1 to have been the principal on the one side, and to have been armed with a sword, with which he wounded the deceased. It is also equally clear that he and the prisoner No. 5, Muckdoombux, wounded the prisoner Nucktoo, and that Meerun (No. 7) was the principal on the other side. The *sooruthal* showing the deceased to have received a sword-wound on the back part of the right thigh just above the knee, ten fingers in length, five fingers in breadth, and gaping, from the muscles and sinews having been severed, and much hæmorrhage to have occurred, whilst Nucktoo was shown to have received one sword-wound on the left side of the head, eight fingers long, one finger broad and one finger deep, a second on the right side of the head, four fingers long, one finger broad and one finger deep, and a third, of a slighter nature, two fingers broad and a barley-corn deep on the shin-bone of the right leg, was read over and duly attested by the subscribing witnesses, Nos. 10, 11 and 12. The same record also showed the deceased and Nucktoo to have received several blows from *lattees* on various parts of their bodies, The evidence of Dr.

Beale, the civil assistant surgeon, is to the same effect, and that the deceased died in consequence of the injury received, and which he was of opinion had been inflicted by a sword or some such sharp-cutting instrument. Dr. Beale also deposed to the deceased having been a strong healthy man, and apparently not laboring under any disease, though weak from the hæmorrhage that must have ensued on the infliction of so severe a wound, and though every attention was paid, and suitable dressings were applied to the wound, it became gangrenous, and the deceased sunk and died on the 4th of August, or five days after the affray. Unfortunately the deposition of the deceased was not taken before his death; but the witnesses Nos. 10, 11 and 12, severally deposed to his having, at the time of the *sooruthal* being drawn up by the police, declared the prisoner No. 1 to have inflicted the wound with a sword. The prisoners Nos. 1 to 6, in their defence, pleaded much to the same effect, namely, that they merely accompanied the peada to point out the accused in Hidayatollah's case and were attacked and slightly wounded by the opposite party, and in consequence immediately decamped and gave notice to the police, but that they were not the aggressors, nor did they make any attack or assault on the other party, and cited several witnesses to prove their innocence, but on their evidence, which in no wise exculpated the prisoners, not the smallest reliance could be placed, save in so far as it proved beyond a doubt the fact of the prisoners being present on the occasion and to their receiving blows from the opposite party: in fact it was clear they had been well tutored for the occasion, and strong doubts existed as to their own innocence and non-participation in the row. The prisoner Meer Meerun, (No. 7) entered into a lengthy detail of his grievances, and the oppression exercised towards him by the zemindar on account of his *milik* lands, and declared himself to have been maltreated and wounded by the opposite party without any opposition being offered on his part. Prisoner Meer Meeah (No. 8) pleaded an *alibi*, declaring himself to have been standing at the door of his house, whence he saw people running about in various directions; and hearing that his uncle, No. 7, had been killed, he went out and aided in bringing home the deceased, Nucktoo, and his uncle, who were all wounded.

"Prisoner Ekram (No. 9) denied having taken part in the affray, and pleaded that it unfortunately so happened that he that morning had come from his home, three *coss* off, on a visit to his father, No. 7; that when in the house he heard a row, and was told the zemindar's people maltreated his father; and on their way from the scene of action they knocked him down because he was looking out to ascertain what had occurred.

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" Prisoner Hossein Alee (No. 10) pleaded that he was asleep at the commencement of the row, but hearing the uproar went out to satisfy himself as to the cause; he however took no part in the affray and was struck by the prisoner No. 5 on the left wrist. He also assisted in bringing home those more severely wounded.

" Prisoner Peerun (No. 11) brother of No. 7, declared he was at his meals at the time of the row, but heard of it and the wounding of parties, but was afraid to venture out.

" Prisoner Nucktoo (No. 12) denied having been concerned in the affray, but on hearing the uproar he went to the spot, and received a sword-wound from Karoo and Muckdoombux on the head, and another on the shin-bone from another party. All the above prisoners cited witnesses to support their statements, but in their evidence, so clearly one-sided, not the smallest reliance could be placed; they had evidently been tutored for the occasion and altogether failed to exculpate the prisoners from having taken an active part in the affray; and from the manner in which they give their depositions, and the position they must have occupied at the time of the row to enable them to observe so minutely all that occurred, it was more than probable that they themselves were concerned on the prisoner's side.

" The jury convicted all the prisoners, remarking that the evidence proved Karoo (No. 1) to be guilty of the culpable homicide of Bocha Khan, deceased, and wounding of Nucktoo, and that Muckdoombux (No. 5) was also guilty of the wounding of the latter party; in which verdict I fully concurred.

" The fact of the presence of all the prisoners at the scene of strife is clear, both from the defence of the prisoners themselves, the wounds received by them in the affray, and the evidence of the witnesses both for the prosecution and defence. It remains only to weigh that evidence to ascertain who were the aggressors, and consequently the cause in a great measure of dispute. It is very clear both parties had been on bad terms for a considerable time previous to this occurrence respecting some lands, and that Mr. Forbes, as zemindar and master of the prisoners Nos. 1 to 6, had deputed them to assist Iidayutoollah, his *tuhseeldar* and the avowed enemy, of the prisoner No. 7, in collecting revenue, and supporting him in other acts of a questionable character. These prisoners, for no reasons that appear on the record save to point out, the prisoners Nos. 7 to 12, accompanied the foudjaree peada, Munnoo, when one person would have sufficed for that purpose, and, under the cloak of arresting those parties, commenced the attack, whilst the evidence of Sootee Chowkeedar (witness No. 1) and the peada Munnoo (witness No. 2) clearly shows the affray to have ensued on the two par-

ties meeting. It is clear Karoo and his party went prepared for a row, and that Karoo was the principal on that side. It is also as clearly established that Meerun and his party were prepared for the attack, having a number of men ready at hand, and that Meerun (No. 7) was their leader. The aggressors, therefore, were in my opinion the prisoners Nos. 1 to 6. Each party has attempted to prove by the evidence of their witnesses that they were assaulted without cause, but this is not to be credited, inasmuch as Karoo and his party had ample time to quit the spot before any resistance was offered by Meerun and others, and consequently before any collision took place, and as all on Karoo's side appeared to have suffered more or less maltreatment, as shown by their wounds, and Bocha Khan on the opposite side was so severely wounded that he died in hospital five days after the affray, it is evident they must have taken a very active part in the business. On the other hand it is equally clear that a number of persons had been previously assembled by Meerun to resist the opposite party on any and all occasions in consequence of former acts of oppression, and therefore such resistance and assemblage of people for resistance were premeditated. In concurrence therefore with the verdict of the jury, I sentenced Karoo, as the principal in the affray on one side, to seven (7) years, and Meerun, as principal on the other side, to five (5) years' imprisonment, with labor in irons, and Muckdoombux to four (4) years' imprisonment, and a fine of rupees one hundred (100), in lieu of labor, and the remaining prisoners to three (3) years' imprisonment, and a fine of rupees seventy-five (75) each, in lieu of labor."

Remarks by the Nizamut Adawlut.—(Present: Mr. W. B. Jackson.)—"This is a case of affray with homicide. A penda went with a warrant to apprehend Meerun and several others of the prisoners, and Karoo and five others of the prisoners went with the penda, to point out the parties and to protect him; the people with the penda had swords and staves. It seems that Meerun was pointed out, and the warrant shown for his apprehension, on which he ran away a short distance, and then with a party of his people attacked the party with the penda; they repelled the attack and wounded two men with swords, one of whom died of his wound afterwards; blows with *lattees* were inflicted on both sides. Now it is plain that Meerun and his party were guilty of resistance of the process; but this is not charged against them; however, their assault on the other party was illegal and unjustifiable; and if the other party only defended themselves, and in doing so wounded their assailants, I should have held their conduct to be justifiable; but this does not appear to have been the case. There has been a dispute regarding land between Forbes, a planter on one side, and

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Meerun on the other, and it seems that the men on Forbes' side went with the peada, taking swords and staves with them, and in fact with so hostile an appearance, as in some measure to justify the use of hostile measures on the opposite side. I cannot, therefore, acquit the party on the side of the planter of going in a considerable number armed to seek an excuse for getting up an affray; though the evidence in my opinion shows they were not the aggressors, still there was no necessity of sending a party of armed men to execute a simple warrant, and if any such necessity had existed, several peadas should have been sent, not the armed friends of the prosecutor. It was proper enough that Karoo should go to point out Meerun, Karoo being the brother of the prosecutor in the case in which the warrant had been issued; but on the whole, I think the judge has taken the right view of the case in considering Karoo's party culpable as well as the others. I see no reason to interfere."

PRESENT:

R. H. MYTTON, Esq., *Officiating Judge.*

GOVERNMENT

versus

SUROOP CHUNDER SURMAH.

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SURMAH.Sentence of
five years'
imprisonment
for fraudulent
alteration in
the copy of a
chitta, con-
firmed.

CRIME CHARGED.—1st count, having in the copy of a *chitta*, dated (10th) — 1195, erased the name of Munneeram Pung, and substituted that of Ramnath Bhutt, and also having made erasures in the report given by Soobul Chunder Mohurir on the back thereof, the same being fraudulent; 2nd count, having fraudulently made erasures in the report written by Soobul Chunder Mohurir on the back of the copy of a *kubala*, dated 11th Assar 1204; 3rd count, knowingly and fraudulently altering the above fabricated copies of a *chitta* and *kubala* by means of a petition purporting to have been given by Ramgobind Surmah and Mahomed Nasir; 4th count, fraud and cheating, in having petitioned in the name of Mahomed Afzul for a copy of the fabricated copy of the *chitta* mentioned above, with the intent of filing it in the collectorate as a copy of a true document relative to his property, he knowing the same to be false and fabricated; and 5th count, privy to the above charges.

CRIME ESTABLISHED.—Fraudulently making erasures in certain documents and knowingly altering the same.

Committing Officer, Mr. W. B. Buckle, magistrate of Sylhet. Tried before Mr. F. Skipwith, sessions judge of Sylhet, on the 6th October 1852.

Remarks by the sessions judge.—“ The prisoner had a suit in the collector’s office relative to some rent-free land called Ram-nath Bhutt, but was unable to adduce any evidence in support of his claim either before the deputy collector or collector, and the case was decided against him. After its decision a petition, signed by one Bulram Pal, was found in the magistrate’s petition box, stating that the petitioner had found a deed of sale and a *chitta* on the road, and he therefore gave them up, but no person answered to the name of Bulram Pal when called for. At the same time a petition of Mahomed Afzul, written and signed by the prisoner, was found, praying for copies of the identical documents which were discovered in the office to be fabricated. Mahomed Afzul states, the prisoner told him he had written the petition and made him acknowledge it, and that he did not supply the stamp on which the petition was engrossed. It is proved indeed by the stamp vendor that the stamp paper was sold to the prisoner. It is proved also by a receipt in the case that a copy of the genuine deed was delivered to the prisoner, so that he must have known that the one which he solicited a copy of was fabricated. It is in evidence also that the prisoner went to the collector’s *amlah* and stated his wish to file in the office some papers which he stated he had found, but they were not received, so there can be little doubt, but that he was the person who filed the petition under the name of Bulram Pal.

“ The prisoner in his defence urges, that Afzul gave him four pice to write his own name on the petition, and that it was not likely he would have given any petition for the documents as he did not know of their existence, a fact proved by the collector and deputy collector’s decisions. Unfortunately for him there are two petitions of his in the collector’s office (copies of which have been transferred to this case), setting forth the existence of a *chitta* and *kubala*, and the quantity of land mentioned in the petition is identical with that in the fabricated *chitta*, so that his pleas are of no weight. He called witnesses to prove the existence of enmity with one Sude Roy, but they denied any knowledge thereof.

“ The assessors convict the prisoner of the charges; and the circumstantial evidence against him is so strong, that I cannot but agree with them, and in consideration of his having once before been convicted of forgery, I have sentenced him to five (5) years’ imprisonment, with labor in irons.”

Remarks by the Nizamut Adawlut.—(Present: Mr. R. H. Mytton).—“ There is no complete history of the transactions out of which this trial arose to be found in the record. The magistrate has given none in the column of the calendar appropriated to the purpose, as he ought to have done in such a case, and the statement given by the sessions judge in the abstract is

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neither complete nor correct. Much trouble has therefore been imposed on this court which ought to have been obviated. The following are the circumstances to be gathered from the record. The prisoner had a claim to lands of a resumed *lakhiraj* tenure in the name of Ramnath Bhutt. At the time of settlement, by the prisoner's own account, he could not produce any proof, and recorded before the deputy collector that his documents had been stolen, and therefore the land was released as appertaining to a *ta'ook*. The prisoner, however, appealed, and from his statement to the magistrate it is clear that he considers the case to be still pending. In December 1848, certain papers, among which is one purporting to be a *hustobood chitta* of lands belonging to Seega Munneeram Pung, in the *mouza* of Deocullus, in which the prisoner's claimed land is in part situated, were found in the box kept by the magistrate for the reception of petitions, together with a petition signed by Ram Mohun, setting forth that he had found the papers near the collectorate. On calling his name, however, he did not appear. In September (year not apparent) a *kubala* of land in Seega Munneeram Pung, was similarly found with a petition, purporting to be of Ikhtyar Khan. Subsequently a petition, purporting to be of Gour Kissore Deb, was found in the same place, asking for the return of both these papers. On calling his name this person also was not to be found. The prisoner on 19th May, petitioned for copies of these papers. The mohurir in charge of the department produced them to the magistrate, pointing out the circumstances under which they came into the office, and that they bore erasures, upon which the magistrate ordered copies to be given, but a note to be endorsed on them, setting forth the circumstances, and that they *could not be relied on as proof in a court*.

" On the 15th April, a petition was presented to the collector by the prisoner, stating that he had now found the *kubala* of the land he claimed in Seega Ramnath Bhutt, and the *hustobood chitta* of that portion of the land (*i. e.*, two *hals*) situate in *mouza* Deocullus, and that he herewith filed them. In a postscript he states that *he will file them hereafter*.

" On the 3rd May the magistrate found in his box two petitions as of Soorooop* Narain Surma and Ram Govind* Surma, stating that they had found the accompanying papers, *i. e.*, the very copy of the *chitta* granted to the prisoner in 1849, and an original *kubala* of lands in Kareemoollah Seega. These persons on being called did not appear. At the same time, *i. e.*, on 3rd May, a petition as of Mahomed Afzul was found, applying for copies of the copy of the *chitta* and of the *kubala* of Seega

* Not Bulram Pal as stated by sessions judge.

Kareemoolah, which were ordered to be granted. The Mohafiz, on their coming into his hands, brought to notice the above facts, and that the name of the tenure on the *chitta* had been altered from Munneeram Pung to Ramnath Bhutt, and that the note on the back had been altered so as to do away with the force of the magistrate's remark that it could not be received in proof in a court. Also that Mahomed Afzul's petition was in the handwriting of Soorooop Thakoor, the prisoner, a person well-known at Sylhet, who was convicted of falsifying the collectorate *tehsil* accounts and imprisoned several years ago.

"Mahomed Afzul on being questioned admitted that he had been employed by the prisoner to present the petition.

"On the 20th June, *i. e.*, while the inquiry was pending in the foudjaree, another petition was found on the magistrate's table as presented by Mahomed Nasir, producing the copy of the *kubala* of Seega Munneeram, which had been previously taken by the prisoner, and containing a statement intended to be exculpatory of the prisoner. This copy contains an alteration in the certificate on the back. Mahomed Nasir deposed that he knew nothing of the petition.

"The facts above narrated have been sufficiently established on the trial, and the prisoner has advanced nothing whatever to refute them.

"The reasons for this complicated mode of proceeding as regards the *chitta* is apparent on inspection of the documents alluded to. The original papers pretended to have been found by Ram Mohun are on such flimsy paper that erasure and substitution of name could not be made in them without detection. When effected in the copy the prisoner would appear to have been on the eve of filing them, when on second thought, he must have deemed the erasure and substitution too palpable to pass the scrutiny to which the paper would be subjected on trial of a case, but might be overlooked by a copyist, wherefore the second story of the finding on the road and the application, through Mahomed Afzul, for fresh copies.

"The fraudulent intention with regard to the copy of the *chitta* in which alterations have been made, the connexion of the prisoner with that paper, and that it was altered to suit his purpose, is established on strong presumptive evidence, and therefore the first count of the charge is fully supported.

"With regard to the second count, which relates to the alteration in the certificate on the back of the copy of *kubala* of Seega Munneeram Pung, pretended to have been presented by Mahomed Nasir, there is no evidence to connect the prisoner with the erasure. The document even with that erasure could not benefit him; it is not the *kubala* alluded to in his petition to the collector.

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"The presumption is certainly that the prisoner was the real presenter of these documents, but it is not a presumption which amounts to proof; it is not therefore necessary to consider whether the presentation in the manner above stated, even if brought home to the prisoner, would amount to an 'uttering' in the legal sense of the word.

"The prisoner appeals, asserting:—

First.—"That his papers have been changed, but what papers is not stated.

Secondly.—"That his witnesses have not been produced. This is contradicted by the record. All the witnesses cited by him were produced and examined.

Thirdly.—"That some depositions on the trial were taken in his absence. He does not state what depositions, nor did he take the objection to the judge. It cannot now be attended to.

"The offence established against the prisoner is that covered by the first count, *viz.*, 'Having fraudulently made or caused to be made alterations in a copy of a *chitta* and in the endorsement thereon,' such offence being punishable as forgery, under Clause 3, Section IV. Regulation II. of 1807. The sentence, considering that the prisoner is an old offender, is a lenient one.

"The appeal is dismissed and a warrant to the above effect will be issued. *

"The circumstances of this case show that the method of receiving petitions adopted by the magistrate of Sylhet is objectionable. It affords opportunities for fraud and for making malicious aspersions, which could not with safety be attempted if petitions were never taken except openly from the presenters, and they were heard *instantly*.

"The calendar does not contain a list of the documentary evidence in the case as it ought."

PRESENT :

A. J. M. MILLS, }
AND } Esqrs., *Officiating Judges.*
R. H. MYTTON, }

GOVERNMENT, TELUK CHUNDER AITCH AND RAM-
SOONDER AITCH

versus

ALUK CHUNDER SEN.

CRIME CHARGED.—Wilful murder of Muthoora Chunder and Hurnath, children, for the sake of their ornaments.

Committing Officer, Mr. W. M. Beaufort, magistrate of Backergunge.

Tried before Mr. A. S. Annand, officiating sessions judge of Backergunge, on the 1st November 1852.

Remarks by the officiating sessions judge.—“ The prosecutors in this case are Teluk Chunder Aitch, and his nephew Ramsoonder Aitch, whose sons have been murdered by the prisoner. Teluk Chunder Aitch, the father of the deceased Muthoora Chunder, deposes, that on Sunday the 15th Bhadoon all the women of his house had gone to a marriage feast at the *baree* of Neel Coomul and Kalee Koomar Deb; deponent, Joogul Kishen Gooh, Eshan Chunder Doss, Komal Kishen Doss and the two deceased children, Muthoora Chunder and Hurnath, remained at home. About 4 o'clock, Muthoora Chunder asked deponent for some sweetmeat, which he gave him and Hurnath. At this time the prisoner, Aluk Chunder Sen, was gathering *sufree-ams* from his tree close by, and Hurnath asked and got some from him. Muthoora Chunder and Hurnath both were going to him for more, when deponent told them that they should not do so, as he was a bad man and his enemy. They went however to the house of the prisoner. After about an hour and a half, the children not returning, deponent called out to them, but receiving no reply, went with Joogul Kishen and others to search for them. They could see nothing of them, when Mohun Chunder Chukrabutty said that he had seen the boys near Aluk Chunder Sen, the prisoner, about 4 o'clock. Deponent and the others saw in their search the children's footprints on the edge of a *khal* near prisoner's house. After a time the prisoner came up and asked what had happened, when on being questioned as to what he had done with the children he ran off. On this deponent suspected that he had killed them. On the next day, about 7 in the morning, Mohun Chunder Chukrabutty came to prosecutor and said, that he had found the body of Hurnath on the edge of the *khal*, and brought it to

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the prisoner's house, and had also seen the body of Muthoora Chunder floating on the *khal*; that both bodies had been stripped of the silver ornaments which they usually wore. Prosecutor then went to the thanna and gave his deposition before the jemadar, the darogah not being present. The jemadar came immediately, sent in the bodies, and on seizing, on the Thursday following, the prisoner, he confessed that he had killed both the boys for the sake of their ornaments, and produced the latter, in the presence of numerous witnesses, wrapt up in a *dhotee* which had belonged to the deceased boy Hurnath, from a ditch, in which he had hidden them, on the eastern side of the house of Eshur Doss, where they were buried under the water and mud. Deponent did not see the bodies, he could not bear to do so, but had heard that the teeth of Hurnath were broken, and there were scratches on his face. On the neck of Muthoora Chunder there were the marks of a man's fingers, as if forced into the throat. Deponent's house is four *haths* distant from that of prisoner; only a ditch divides them. The latter had formerly been in deponent's employ as a mohurir, but had been discharged on account of his bad character. Muthoora Chunder, deceased, was five years old, and had silver bangles and armlets, and a *chandmala* round his waist. Hurnath, deceased, was seven years old, and had on a *dhotee*, silver bangles, and armlets, and one anklet, the ornaments on both being worth 14 or 15 rupees. Recognizes and identifies all the ornaments shown to him and the *dhotee* as having been those of the deceased children, and as having been taken out of the ditch in which they had been hidden by the prisoner in his presence. Believes that the prisoner, who had no ostensible means of livelihood, killed the children for the sake of their ornaments, that he might give the money he got for them to a prostitute with whom he is connected, named Radhamonee, to defray the expenses of her *chokree's* marriage. Ramsoonder Aitch, the father of Hurnath, was not at home when his child was killed; he was sent for, and came the next day; his evidence merely confirms what has been before stated.

"The prisoner, Aluk Chunder Sen, confessed at the thanna that on the afternoon of Sunday, the 15th Bidadoon, he had enticed the children to the banks of the *khal* by the promise of *sufrée-ams*, which he said were on the other side, and on their asking him how they were to get across had taken one by each wrist, and going forward into the water held them down in it until they were drowned, when he hid the bodies in the jungle on the banks of the *khal*, where Hurnath's body was found. Having stripped off their ornaments and wrapped them up in a *dhotee* of Hurnath, he hid them under the water and mud of the ditch, from which he produced them, as before described.

He says that he killed the children for the sake of their ornaments, and intended to go to Calcutta with his booty. Before the magistrate and in my court he denied all knowledge of the crime.

“ Numerous witnesses corroborate the statement of the prosecutor, and were present when the prisoner produced the ornaments of these poor children wrapt in the *dhotee* of one of them from the ditch in which he had secreted them. His thanna confession is well authenticated; and coupled with the strong circumstantial evidence, leaves no doubt upon my mind that Aluk Chunder Sen murdered the children, as he has stated, for the sake of their ornaments. It is proved that they were enticed away by the prisoner on the pretence of giving them *sufree-ams* on Sunday afternoon, and that they were never seen alive again; that on Monday, the body of Hurnath was found on the banks of the *khal*, and that of Muthoora Chunder floating on it. That the prisoner, when he was apprehended, produced, in the presence of many witnesses, the whole of the ornaments and clothes which the unfortunate children had on when last seen, from the place in which he had secreted them; in addition to which there can, I think, be no doubt that he confessed at the thanna the crime with which he was charged.

“ The jury convicted the prisoner of the murder of Muthoora Chunder and Hurnath, for the sake of their ornaments on violent presumption; and concurring in this verdict, and considering the case one of the most atrocious that has ever come under my knowledge, recommend that Aluk Chunder Sen should suffer death.”

Remarks by the Nizamut Adawlut.—(Present: Messrs. A. J. M. Mills and R. H. Mytton.)—MR. A. J. M. MILLS.—“ The prisoner in his defence pleaded that the children were accidentally drowned, and that the prosecutor and the witnesses, who bore him enmity, had conspired with the jemadar of police to accuse him falsely of murdering them. He denied that he made any confession before the jemadar, and stated that his signature had been forged; but neither in his oral nor written defence does he make any mention of the children's ornaments, which it is alleged he gave up. Before the magistrate he denied his Mofussil confession, and the recovery of the ornaments at his indication, but admitted that he had affixed his signature to a writing at the bidding of the jemadar. He called three witnesses to his defence, but they speak more against than in favor of him, and on reviewing the proceedings on the police inquiry and on the trial, I can find no grounds for doubting the prisoner's guilt. The deceased were last seen alive in his company. The prisoner was taxed the same evening with having been last

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seen with them, and, terror-struck, instantly absconded. He was apprehended on the 2nd, and made a full and unqualified confession on that day before the jemadar, the truth of which has been conclusively established by his producing the ornaments which the children wore at the time they left the house of the prosecutor, and by their having been proved to have belonged to them. The evidence to the point of the prisoner giving up the property is very full and clear.

"The charge is, in my opinion, clearly proved against the prisoner. The case exhibits no features of an extenuating nature; and I would sentence the prisoner to suffer death."

MR. R. H. MYTTON.—"The proof against the prisoner is conclusive. In his first defence to the magistrate he cited some witnesses; but to prove what, he did not state. In a petition to the magistrate, dated 24th September, he cited three other witnesses. After commitment, when interrogated, he stated that he did not wish any witnesses to be produced at his trial. Nevertheless those cited in his petition were examined at the trial. In his petition of defence to the sessions judge, he cited a number of other witnesses to prove that the case was a conspiracy against him. These witnesses were not sent for; and there is no reason to postpone passing sentence in order that evidence to such a general, vague and evidently unfounded assertion should be taken. I concur in the conviction and proposed sentence of death."

PRESENT :

R. H. MYTTON, Esq., *Officiating Judge.*

GOVERNMENT

versus

DOONDY MUNDUL (No. 1), POOTOO KHAN (No. 2)
AND MYEZOODDY (No. 3).

CRIME CHARGED.—1st count, Nos. 1 to 3, maliciously maiming Sheikh Abdool Odood (witness No. 1) by cutting off a portion of his nose, against all the prisoners; 2nd count, Nos. 2 and 3, accomplices in the above crime.

CRIME ESTABLISHED.—Accomplices in maiming Sheikh Abdool Odood, by cutting off a portion of his nose.

Committing Officer, Mr. E. A. Samuells, magistrate of 24-Pergunnahs.

Tried before Mr. E. Bentall, additional sessions judge of 24-Pergunnahs, on the 7th August 1852.

Remarks by the additional sessions judge.—“ Abdool Odood is a servant of some of the family of the late Tippoo Sultan, and is employed by them about the different courts of this district. On the 26th of May, at 7 A. M., he was passing in the Tallygunge road, when Myezooddy (prisoner No. 3) asked him to go down a lane to have an interview with another person. He went to the gate of a garden or orchard, when he was asked to read a Persian letter, which he did, and was soon seized by several persons and carried into the garden, and had his nose cut off. He was the same day taken to the hospital, where he was properly cared for. On the 29th of May, the magistrate directed the nazir to take him and investigate the case, and Abdool Odood then deposed that the witnesses from Nos. 7 to 10½ of the calendar, could give information in the case, but he could not himself tell the name of any of the persons who attacked him. On the 31st, the nazir took the depositions of the witnesses who were named, and owing to what they said, the prisoners were apprehended on the 1st of June. There are two witnesses who state that they saw the crime committed, but the nazir and the magistrate appear to consider them as untrustworthy witnesses, for they had come forward and talked to the nazir on the 30th of May, and on the 31st of May they came again and made depositions and for the first time accused the prisoners. I therefore set their evidence aside as of no value whatever. Abdool Odood states that he recognizes the whole of these prisoners as of the party who maimed him, and there is no apparent reason why he should falsely accuse them. Myezooddy (No. 3) was seen by the witnesses Nos. 10 and 10½, to call Abdool Odood down the

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Case of
DOONDY
MUNDUL and
others.

Sentence of
seven years,
for being an
accomplice in
cutting off a
man's nose,
confirmed a-
gainst one pri-
soner. Two
other prison-
ers acquitted
and released
on appeal for
want of cre-
dible proof.

1852.

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Case of
DOONDY
MUNDUL and
others.

lane, and there is no reason for doubting their evidence; besides which he allowed, before the magistrate, as appears by the record, that he did tell Abdool Odood that he was wanted in the garden. The prisoners Nos. 1 and 2 are employed in the orchard in which the crime took place. Abdool Odood states that he recognizes them. Witness No. 7 states, that he saw these prisoners running off, and Nos. 8 and 9 state, that they saw these prisoners on the premises at the time. There is suspicion thrown on the evidence of these three men, as after they had deposed before the magistrate as above related, they, on a later day, said that they also recognized another man whom they had not at first named. The omission would render their after-statements of no value, but would not deprive their first statements of all value. The prisoner Myezooddy, in his deposition before the magistrate said, that these men were present. Their defence is, that they had gone that morning to Balragatta, and they bring several witnesses to the fact, who were first named on the 5th of June. I do not think that these witnesses can be depended on for stating, the exact time that the prisoners left home and were seen at such and such places, but it is highly probable that they did go off immediately after committing the crime. I convict the prisoners chiefly on the evidence of Abdool Odood, and I think that from the evidence of the witnesses Nos. 10 and 10½, and from his own admission before the magistrate, there can be no doubt about Myezooddy having enticed Abdool Odood to the garden gate, and his having pleaded an *alibi* is quite a sufficient reason for believing that he was associated with the party knowing their evil intentions. I also convict the prisoners Nos. 1 and 2, chiefly on the evidence of Abdool Odood, but I also think that the evidence of witnesses Nos. 8 and 9, is to be trusted. It is, however, to be regretted, that there was so much delay* before the investigation commenced. Abdool Odood is frightfully disfigured, and considering that the crime was committed in so daring a manner, by so many people, the crime deserved a very severe punishment."

Sentence passed by the lower court.—Each seven (7) years' imprisonment, with labor.

* Extract from a letter from the Register of the Nizamut Adawlut to the Additional Sessions Judge of 24-Pergunnahs, No. 1402, dated 30th September 1852.

"You are requested to call upon the magistrate to explain the cause of the delay noticed by you in commencing the investigation of this case*, and forward it with your remarks for the court's orders; explaining, at the same time, whether the proceedings disclosed any motive for so malignant an outrage."

* Doondy Mundul and others, Nos. 1 to 3, of Statement No. 6.

Remarks by the Nizamut Adawlut.—(Present: Mr. R. H. Mytton).—"Mr. Norris has appeared for the appellants, Baboo Submoonath Pundit on the part of Government.

"The evidence of the witnesses to the fact has been rejected by the magistrate and the sessions judge as not to be credited. The only other evidence, except that of the sufferer, against Doondy and Pootoo is that of Nazir, (No. 8) and Haroo (No. 9), and that, even if credible, is only of a circumstantial nature. But it is not to be relied on. These persons have shown that they are not scrupulous in giving evidence, and were under commitment for perjury at the time of this trial. There remains no proof but the evidence of the sufferer. He, in his first depositions, stated that he did not know who cut his nose off, nor in whose employ they were, who had done the deed. In the sessions court he says, that the prisoners did it; that he had now and then seen them before; that they were Oomda Begum's servants; and that he could have recognized them in Calcutta. Had this been true, he would have indicated the persons at whose hands he had met with his grievous injury, as Oomda Begum's servants in his first despositions, and indeed, would most probably have stated that fact to the very first persons he saw, which he did not. As, therefore, there is suspicion that this man has not that scrupulous regard for truth which would alone justify conviction on his sole unsupported testimony, and

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MUNDUL and
others.

From the Additional Sessions Judge of 24-Pergunnahs to the Register of the Nizamut Adawlut, No. 185, dated the 10th November, 1852.

* *From the Magistrate of 24-Pergunnahs to the Additional Sessions Judge of 24-Pergunnahs, No. 1410, dated 5th November, 1852.*

SIR,—“I have the honor to acknowledge the receipt of your letter, No. 170, of the 25th ultimo, with its enclosure from the Sudder Court, and in reply beg to inform you, that you were entirely mistaken in supposing that any delay whatsoever occurred before the investigation of the case commenced. The investigation was in fact commenced immediately by the local police. Within a few hours I had myself set every engine in my power at work to discover the perpetrators, and the prosecutor was sent to the spot with the nazir to identify the parties the instant he was capable of being moved and the wound was sufficiently healed to admit of his speaking. It might, I think, have occurred to you that as the locality was close at hand, much might be done in the way of investigation by verbal communication with the police, and I may perhaps be allowed to suggest to you that in cases of this kind, where you imagine that explanation is required, it would be as well to ascertain whether it cannot be furnished by the sessions mohurrir who attends you, or by myself, before making it a matter of comment in a Report which you know is very likely to be published.”

“I have the honor of forwarding the explanation” of the magistrate of 24-Pergunnahs, called for in the 2nd paragraph of your letter, No. 1402, dated 30th September last, and of observing that the defence of the magistrate is satisfactory, and that I do not feel it necessary to defend myself against the insinuation of want of courtesy towards the magistrate, as I did not expect that he would

be called on for an explanation, and that I seldom think when I am writing my reports that they may be published.

“There was no motive for the outrage proved by evidence, but it was supposed that those who committed it, were engaged by another party, against whom no proof could be brought.”

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Case of
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others.

as the trial shows that influence has been at work to suborn evidence, I am of opinion, that Doondy and Pootoo should be acquitted and released. An order to this effect will issue.

"The case against Myezooddy is better substantiated. The evidence of Jeetoo (No. 10) and Azeem (No. 10½) proves, that he called the victim to the garden; and in his defence to the magistrate, he admitted that he did so. The sentence against him is by no means severe, considering the character of the outrage. His appeal is rejected."

PRESENT:

J. R. COLVIN, Esq., Judge.

UJOODHEARAM CHOWDRY AND RAM CHOWDRY

versus

NUBYE BAOREE, (No. 34), GOPAL ROY, CHOWKEEDAR, (No. 35, APPELLANT) AND MODHOO BAOREE (No. 36).

1852.

December 6.

Case of
GOPAL ROY,
CHOWKEEDAR
(appellant)
and others.

CRIME CHARGED.—1st count, dacoity in the houses of prosecutors on the night of the 28th March 1852, corresponding with the 16th of Cheyt 1258 B. S., and plundering from the house of Ujoodhearam Chowdry, property valued at rupees 8-12-0, and from that of Ram Chowdry, property valued at rupees 8-6-0; and 2nd count, setting fire to the chopper on the outer wall of Ujoodhearam's house.

CRIME ESTABLISHED.—Dacoity in the houses of the prosecutors and plundering from the house of Ujoodhearam Chowdry, property valued at rupees 8-12-0, and from that of Ram Chowdry, property valued at rupees 8-6-0.

Committing Officer, Mr. W. J. Longmore, officiating joint magistrate of West Burdwan.

Tried before Mr. P. Taylor, sessions judge of West Burdwan, on the 15th September 1852.

Remarks by the sessions judge.—"The prosecutors in this case, who were cousins, lived in the same outer *enceinte*; but their huts were separated by a party wall, perforated by an opening in which there was no door. The dacoits forced the door of the outer inclosure, and attacked Ujoodhearam in the first instance, and then some of them went through the opening in the party wall, for the purpose of robbing Ram Chowdry. His huts or rooms were two in number; one, which had a door opening to the south, was immediately entered, and a couple of silver armlets and two cloths were carried off therefrom.

"Ram Chowdry and Nirunjun (or Niroo) Makoor, the chowkeedar of the village (witness No. 16), who had been aroused by the noise, and of whom the latter had a drawn

A prisoner convicted of dacoity by the sessions judge acquitted by the Nizamut Adawlut, there not being ground of legal conviction, though there were strong circumstances of suspicion against him.

sword in his hand, were in the other hut, or room, and, on being summoned, refused to admit the robbers. *

"Fracture of the door with a *koolaree* was then resorted to, and one of the dacoits (prisoner No. 36) attempted to enter the hut, when he received three wounds from the sword of the chowkeedar and retreated. On his discomfiture, prisoners Nos. 34 and 35 entered simultaneously, but were both driven back, the former with five and the latter with one sword-wound.

"Upon this the dacoits decamped, by the way they came, taking their bleeding comrades with them and got clear off. There were four *ghatwals* in the village, but they did not come up until the dacoits were going, or gone, nor did they pursue them, because, when they commenced doing so, they found that the thatch on the wall of the *enceinte* of the prosecutors' houses was on fire, and were, they affirmed, obliged to return and put it out. After this had been done and the state of the place examined, notice was sent to the sirdar of the Machaparoolia Ghat, Ramchunder Roy (witness No. 2), who came over at half past 12 o'clock and made inquiry.

"The next day notice was sent to thanna Seetla (six *coos* off), through the chowkeedar Niroo Makoor (witness No. 16), but as no official arrived thence on the morrow, a second message was transmitted, through a *ghatwal* named Adhyt, which resulted in the arrival of Enayutoollah, acting mohurir, on the morning of the 19th Cheyt. This officer, who was assisted by Baboo Khan, burkundauz (witness No. 1), accompanied by Ramchunder Roy, *ghatwal* (witness No. 2), and others, followed up the blood to a place in the vicinity of a village called Gourya, in the jurisdiction of the Chatna thanna, about three *coos* from the houses of the prosecutors. Neither of the latter joined in the pursuit. It appeared that Ujoodheeram was absent at Chatna, when the mohurir arrived, and that Ram Chowdry was too lazy to go. The mohurir, knowing that the prisoners Nos. 34 and 35 were *budmashes*, accustomed to reside in the above village, and suspecting that they might be the wounded dacoits, went at once to the house of the former and found him with a fresh wound on his fingers, which he attributed to an accidental blow from a *pakoora*, or bill-hook, thrown down upon his hand by a child. Inquiry was next made for Nubye (No. 34), upon which Heeroo, the father of prisoner No. 35, told the mohurir, that he would find him if his son was released. It did not clearly appear what answer was given to this offer, but its result was the discovery of the prisoner in the jungle, by witness No. 1, as per information obtained from the aforesaid Heeroo. His capture took place at a late hour in the afternoon of the 20th Cheyt, and as he immediately acknowledged having gone to rob the prosecutors, his written confession

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Case of
GOPAL ROY,
CHOWKEEDAR
(appellant)
and others.

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Case of
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(appellant)
and others.

was forthwith taken. In this all the committed prisoners were named, as well as twelve other persons, whose houses were subsequently searched without result, and against whom no evidence was procurable.

"The next day (21st Cheyt) Thakoordoss Ghosal (prisoner No. 39), a respectable man in easy circumstances, was, it appears, sent for by the mohurir, after which his house was searched, and the deposition of the prosecutor Ujoodhearam taken; but which procedure was first in order of time did not distinctly appear. In the house were found a *lota* and *kutora* of brass, which the prosecutor Ujoodhearam declared were his. After this, on the 26th Cheyt, a second deposition was taken from Ujoodhearam, prosecutor, and the prisoners Hurri Roy (No. 37) and Modhoo Baoree (No. 36) were apprehended. The latter, who was caught in the jungle, had fresh wounds on his person, and confessed, naming only Nubye, Baoree and Nuffur Surma.

"Prisoners Nos. 34 and 36 repeated their confessions before the officiating joint magistrate. That of the former did not differ from his Mofussil one; but that of the latter omitted mention of Nuffur Surma, by name, and pointed out prisoner No. 35 as one of his accomplices.

"All the prisoners pleaded '*not guilty*,' before the sessions court, but the answer of Nubye (No. 34) was a confession.

"The *sooruthal*, the apprehension of the prisoners, the confessions of those who confessed, and the finding of the *lota* and *kutora* in the house of Thakoordoss Ghosal (prisoner No. 39) were duly proven by the witnesses named under the appropriate heads in the calendar.

"Witnesses Nos. 5, 16 and 19 also deposed that the said brass vessels were the property of the prosecutor Ujoodhearam Chowdry. The repeated confessions of prisoners Nos. 34 and 36, Nubye and Modhoo Baorees, the evidence of the prosecutor Ram Chowdry and Niroo Makoor, chowkeedar (No. 16), the state of their wounds at the time of their apprehension, and the deposition of the civil assistant surgeon, left no doubt of their guilt, and I therefore convicted them on full legal proof and sentenced them as noted.

"Though the prisoner Gopal Roy, chowkeedar, was accidentally omitted in the Mofussil confession of prisoner No. 36 (Modhoo Baoree), he was mentioned in that of Nubye, and subsequently in the fondaree ditto of No. 36, and his defence, in which he affirmed that his name had been mentioned by the other prisoners through enmity, and that his hand had been cut accidentally by a *pakoora*, or bill-hook, thrown down upon it by a child of three years old, was not supported by the evidence for the defence, and was disproven by the civil assistant surgeon's deposition. It was moreover shown by the prosecutor, that his

father Heeroo attempted to get him off, by betraying Nubye, and that his wound was fresh when he was taken. Under such circumstances, I convicted him also, on full legal proof, and sentenced him as noted.

"The only proof against Hurri Samunt (prisoner No. 37) was the confession of Nubye. No property was found in his house, and the evidence of his witnesses (Nos. 30 and 31), though not very steady, affirmed that he was sick with cholera on the night on which the dacoity occurred. Such being the case, I considered the crime charged not proven against him, and ordered his release.

"I also released Nuffur Surma and Thakoordoss Ghosal (prisoners Nos. 38 and 39), as I considered them innocent of the crime charged, for the following reasons:—

"It was proven by the evidence of the prosecutors and many of their witnesses, and also by a *ghatwalee* case pending before the officiating joint magistrate, which was sent for and read through by the court, that the first prisoner above-named, had a subsistent dispute with Kisto Roy, *ghatwal*, brother of Ramchunder Roy, sirdar (witness No. 2) regarding possession of certain *tabedaree* lands, on which the houses of the two prosecutors stand; that the latter were accustomed to eat and drink in company with the said Ramchunder Roy, and were on the most intimate terms with him and his brother Kisto Roy; that the prisoner Nuffur had an evident right to the said lands, which was sure to appear, as soon as the officiating joint magistrate took up the case; and that it was, therefore, the object of the sirdar and his brother to prevent his prosecuting his claim, by getting him incarcerated for as long a period as was practicable. The evidence for the prosecution, moreover, showed, that there was strong reason to believe that the name of Nuffur Surma had been suggested to the confessing prisoners, or smuggled into their confessions*, by the sirdar and prosecutors, and that every statement of the witnesses, tending to implicate him in the dacoity, had been suborned and invented. His defence was a statement of the above circumstances, and a declaration that he was in the house of Suttoo Chowdry, a short distance from the scene of the dacoity, on the night on which it occurred, which allegation was fully borne out by the depositions of his witnesses.

"In the case of Thakoordoss Ghosal (prisoner No. 39) the evidence of the prosecutors and their witnesses proved, that a relation of the prisoner, named Ram Ghosal, who was also related to the prosecutors and connected with Ramchunder Roy,

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Case of
GOPAL ROY,
CHOWKERDAR
(appellant)
and others.

* N. B.—The thanna mohurir being ignorant of Bengalee, the confessions were written by a Brahmin boy of Gouriah.

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Case of
GOPAL ROY,
CHOWKEEDAR
(appellant)
and others.

sirdar (witness No. 2) and Kashee Mookoottee, the talookdar of Gouriah, who were present in that village when the Mofussil investigation took place, were the prisoner's old enemies, in consequence of his having defeated and humiliated them in certain civil cases, in which both had been concerned, and that there was strong reason to believe, both that the deposition of Ujoodhearam, prosecutor, had been put off with a view to the more leisurely concoction of a conspiracy against the said prisoner (and Nuffur), and that his name had been suggested to the prisoner Nubye (No. 34) when his confession was being taken, or foisted into the same.

"The prisoner declared in his defence, that Nubye had had a violent quarrel with him just before the dacoity, and that he was in Rampore, a mohulla of Bancoorah, some two or three *coss* from the village of the prosecutors, on the night of the dacoity. His statements were sufficiently borne out by those of his witnesses, and the *lota* and *kutura* found in his house were proven to be his property.

"It appeared to me that a little more care and attention on the part of the officiating joint magistrate, would have rendered the commitment of prisoners Nos. 37, 38 and 39 unnecessary; but as he had lately been warned to investigate more closely in future (see Court's Letter, No. 1193, of the 26th August 1852), I did not think it necessary to call upon him for an explanation, but I ordered the *ghatwalee* case to be sent back to him, with a recommendation that it should be read through and decided as soon as possible.

"The acting mohurir of thanna Seetla, Enayutoollah, behaved ill in this case, as he attempted to glorify himself at the expense of fact, by alleging that he went to apprehend Nubye in the jungle himself and pretending that he made much more search for the dacoits than he actually did. He was moreover open to suspicion of corruption, in allowing the names of prisoners Nos. 38 and 39 to be suggested to the confessing prisoners, or introduced into their confessions. The chowkeedar Niroo Makoor (witness No. 16) showed cowardice, in shutting himself up in Ram Chowdry's house, instead of arousing the *ghatwals* and causing the apprehension of the dacoits; and the conduct of the *ghatwals* was most cowardly and inefficient. There is no proof whatever that the arson, charged in the 2nd count, was committed by the dacoits, and it is very possible that the *ghatwals* themselves (one of whom was Kisto Roy, the brother of Ramchunder Roy, sirdar, witness No. 2,) caused it, either as an aggravation of the case against Nuffur Surma and Thakoordoss, or as an excuse for avoiding pursuit of the actual dacoits, for it was remarkable that the burnt spot was round the corner, to the right of the front door of the *baree*, off the side from which the *ghatwals* came.

" All these circumstances were communicated to the officiating joint magistrate by a separate proceeding, with a view to his making such use of them as he may think proper."

Sentence passed by the lower court.—Nos. 34 and 36, each, twelve (12) years' imprisonment, with labor in irons in banishment, and two (2) years more in lieu of stripes, total, fourteen (14) years each, with labor in irons, in banishment, and No. 35, twelve (12) years' imprisonment, with labor in irons, in banishment, two (2) years in lieu of stripes, also with labor in irons, and two (2) years more in consequence of his being a chowkeedar, total, sixteen (16) years' imprisonment, with labor in irons, in banishment.

Remarks by the Nizamut Adawlut.—(Present : Mr. J. R. Colvin).—" The prisoner No. 35, Gopal Roy, Chowkeedar, has appealed. The grounds of his conviction as summed up by the sessions judge, are as follows :—

" ' Though the prisoner Gopal Roy, chowkeedar, was accidentally omitted in the Mofussil confession of prisoner No. 36 (Mudhoo Baoree), he was mentioned in that of Nubye, and subsequently in the foudaree ditto of No. 36, and his defence, in which he affirmed that his name had been mentioned by the other prisoners through enmity, and that his hand had been cut accidentally by a *pakoora*, or bill-hook, thrown down upon it by a child of three years old, was not supported by the evidence for the defence, and was disproven by the civil assistant surgeon's deposition. It was moreover shown by the prosecutor, that his father Heeroo attempted to get him off, by betraying Nubye, and that his wound was fresh when he was taken. Under such circumstances, I convicted him also, on full legal proof, and sentenced him as noted.'

" These are not sufficient grounds for a legal conviction, though there are strong circumstances of suspicion against the prisoner. Statements by other confessing prisoners are no proof, and there has, nowhere throughout the proceedings, been the least admission of the prisoner's guilt. Indeed, the fact of the confessing prisoner, No. 35, Nubye Baoree, having been apprehended through information given by the prisoner's father, furnished an obvious motive for the prisoner having been falsely named as an accomplice in the confession of Nubye. Even had it been distinctly shown that the prisoner had made an untrue statement as to the manner in which he had received the wound on his hand, this would not have sufficed to establish his connexion with this dacoity. The medical officer, however, only says that *he thinks it more likely* that the wound was inflicted with a sword."

" The prisoner must be acquitted and released."

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Case of
GOPAL ROY,
CHOWKEEDAR
(appellant)
and others.

PRESENT:

A. J. M. MILLS, Esq., *Officiating Judge.*

BHYRUBCHUNDER SIKDAR AND GOVERNMENT

versus

MOTHOORNATH ROY ROSE (No. 2), SURROOP CHUNDER KUR (No. 3), SUSTYRAM MUNDUL (No. 4), TARACHAND MUNDUL (No. 5) AND MOHUN MUNDUL (No. 6).

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Case of
MOTHOORNATH ROY ROSE and others.

The case was disposed of on its merits by the rejection of the appeal, in the absence of the appellant's *mookhtar*, although thrice duly summoned at intervals of one week.

CRIME CHARGED.—1st count, dacoity in the boat of Bhyrubchunder Sikdar, the prosecutor, and plundering therefrom in cash, rupees 1,801, and in copper pice, rupees 15, making a total of rupees 1,816, with a bag, during the night of the 3rd June 1852, corresponding with the 22nd of Jeyt 1259; and, 2nd count, concealing the plundered rupees 1,801 and the bag, in a jungle, knowing them to have been obtained by robbery by open violence.

CRIME ESTABLISHED.—River dacoity.

Committing Officer, Mr. H. Rose, joint magistrate of Khoolna, Jessore.

Tried before Mr. R. M. Skinner, sessions judge of Jessore, on the 14th August 1852.

Remarks by the sessions judge.—“From the evidence for the prosecution, it appears that on 2nd June, 21st Jeyt, the prosecutor's gomashtha Buden (witness No. 1) in charge of one bag containing rupees 1,801 in silver, of rupees 86 in pice in three bags, of rupees 200 in notes, and of half notes for rupees 275, was despatched by prosecutor from Sein Bazar, in a boat belonging to Goluck, to buy cloth and salt in Calcutta. Sumbhoo Chunder Shaw (witness No. 2) accompanied him to make purchases, having rupees 500 in silver, and rupees 32 in pice.

“The manjee and his three boatmen lifted the bags into the boat, and stowed them in the hold aft.

“The 2nd night, as they were going with the tide, within two reaches of Paigatcha, they were asked for tobacco by some one in another boat, containing six or seven persons. The gomashtha said ‘go to the forepart of the boat and get it.’ He then received a blow over the arm. He went forward to get the *luggee*; but the boat-people declared they could not get at one. Sumbhoo Chunder seized a stretcher, with which he repelled the assailants, who pushed off, carrying with them the bag of rupees 1,801, and a bag of pice containing rupees 15.

“Neither the manjee nor mullahs made any resistance or received any harm.

" It is strange that as the assailants entered at the back of the boat, the manjee was not beaten though the gomashtha was.

Buden and Sumbhoo Chunder, the two witnesses above-named, say that they went on in the boat to Paigatcha Bazar, where they remained; after some time the guard-boat came up, in which were the naib jemadar and others, who testify that they heard a noise, and seeing a boat going against the stream which turned off on the approach of the guard-boat, they gave chase to it, but it got to land before them. They found it empty and some wet cloths lying near it. They searched the shore for some time in vain, and then took the empty boat on to Paigatcha, where they learned what had happened.

" The chowkeedar of Paigatcha also deposes to hearing of the fact on the night of 22nd Jeyt. Buden and one of the guard-boat people went to thanna Tollah to lodge information, the rest went back in the guard-boat to search the jungle, where the empty boat had been found.

" The mohurir of Tollah on 4th June reported the occurrence and the steps he had taken to the joint magistrate, and on the 5th he sent in the naib jemadar's report, with a plan of the spot, mentioning the empty boat and cloths discovered.

" The zemindar also reported on 7th idem.

" On 8th and 10th June, the darogah of Tollah reported that the empty boat was of Khooma build; therefore the dacoits must have come thence; that near Sein Bazar were numerous bad characters, he therefore went on and consulted with the darogah of Noabad, who told him that Tureekoollah, Chowkeedar of Azgura, had deposed that Surroop, Mothoor, and others had gone in Haran's *dinghy*, and committed a dacoity; that Surroop Susty and Meish had returned four or five days ago, but Mohun and Tarachand had not. He did not know whither Mothoor had come. The *dinghy* had not returned. He also heard that Goluck Manjee, of the same village, a near neighbour of the above-named Tarachand and Mohun, had started with Buden and a large sum of money for Calcutta, and that the guard-boat people had got possession of the empty boat and the money.

" On the 11th June, the Noabad darogah reported this deposition, and he and the Tollah darogah had started for Azgura.

" On the 12th the houses were searched, but nothing was found. At night Surroop, Mothoor and Susty, were seized. They had been scratched by the jungle, and they verbally confessed that they, with Mohun and Tarachand, at the instigation of Goluck Manjee and his crew, pursued in Susty's *dinghy* and robbed; but that on espying the guard-boat, they fled, leaving their boat and the bags of money behind. The darogah could

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Case of
MOTHOOR-
NATH ROY
BOSE and
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others.

not at night get witnesses to the confession; which he took down on the 13th, when Mohun and Tarachand were also apprehended and confessed.

"The prisoners and their confessions were sent in to the joint magistrate with the captured *dinghy* and cloths, which were recognized as belonging to the prisoners. Goluck and his crew were also examined and their houses searched, but no proof was found against them.

"The five prisoners confessed before the joint magistrate on the 14th, and again implicated Goluck and his crew as having informed them of the booty, instigated them to follow, and paid their expenses. They accordingly went after them, and on the 2nd night came up with them and asked for tobacco. The churundar told them to go forward; the crew began making a noise. Goluck Manjee threw a bag of rupees into the boat and fell down, shouting out that 'the dacoits had beaten him and carried off the money. They pushed off up stream and were accosted by the guard-boat people. They then made for land and fled, leaving the money in Susty Ram's boat, and leaving some cloths behind them,' adding that the said boat and cloths were with the joint magistrate.

"On the 20th June, the Tollah darogah sent in his final report, saying that the money was not traceable, for which he was reprimanded and suspected of being in league with the guard-boat people.

"On the 14th July, the prosecutor petitioned the joint magistrate, offering rupees 200 reward to any one who would recover his money; and suggesting that the two darogahs should take the confessing prisoners and search in the Mofussil.

"On 16th idem, the darogah of Noabad, reported that he had been persuading various prisoners under trial to worm out from the confessing prisoners the place where the money was secreted; and at last Moneeram and Jumunjoy, two *hajut tujveez* prisoners, revealed the secret; they had learned from Mothoor that when the dacoits were pursued, he had been left behind carrying the bag, but when he had got some four *russees*, i. e., 160 yards, he was unable to take it further, and hid it in the earth under some cane jungle beneath a tree.

"The joint magistrate took the evidence of the two informants and ordered the Noabad darogah and the naib nazir, with a balagustee and a jail burkundauz, to take the two informants and the aforesaid Mothoor to the spot.

"On the 18th July, the darogah and naib nazir reported the discovery of the booty about 50 yards inland, in a jungle.

"The bag of rupees has been identified by the prosecutor and witnesses.

"The finding of it has been duly attested. Witnesses have deposed to the finding and identifying of the boat as that of prisoner No. 3.

"The prisoners deny the dacoity, but their witnesses do not substantiate their stories.

"No. 4 does not acknowledge the boat.

"No. 2 disavows having concealed or revealed the treasure. His defence is ingenious, but unsupported by his witnesses. He professes that the merchant (*cui bono?*) prompted the two bad characters, Moneeram and Jumunjoy, to pretend that Mothoor had produced the money, and that the spot was an open one.

"They all deny having confessed either to the darogah or to the joint magistrate. But the confessions are duly attested by the subscribing witnesses.

"No. 6 says after he had got into *hajut*, he was told he had confessed.

"I convict all the prisoners of river dacoity, and sentence each of them to fourteen (14) years' imprisonment, with labor in irons, in banishment.

"The joint magistrate will be requested to inquire into the character of Goluck Manjee and his crew; and to see that the reward promised by prosecutor be paid to the police instrumental in discovery of the booty."

Remarks by the Nizamut Adawlut.—(Present; Mr. A. J. M. Mills.)—"The prisoners have appealed. The petition of appeal does not set forth the grounds of appeal; and the *mookhtar*, though summoned three different times, at intervals of one week, has not appeared on the summons.

"I have, however, carefully gone over the proceedings, and concur with the sessions judge in the conviction of the prisoners of the crime charged. The proof of their guilt is most complete. I reject the appeal, and confirm the sentence."

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Case of
MOTHOOR-
NATH ROY
BOSE and
others.

PRESENT :

R. H. MYTTON, Esq., *Officiating Judge.*

ATTAOOLLAH

versus

CHUNDER KANT DOSS.

1852.

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Case of
CHUNDER
KANT DOSS.Prisoner
found guilty
of aiding and
abetting in
the riot at-
tended with
homicide, sen-
tenced by ses-
sions judge,
to four years'
imprisonment.The appeal
rejected, and
the court re-
marked that
the crime a-
mounted to
wilful murder,
and that the
sentence was
inadequate to
the offence.

CRIME CHARGED.—1st count, riot with homicide, on the 12th March 1852, corresponding with 30th Phagoon 1258 B. S. ; 2nd count, being present aiding and abetting in the same.

CRIME ESTABLISHED.—Being present, aiding and abetting in riot with homicide.

Committing Officer, Mr. A. G. MacDonald, magistrate of Rungpore.

Tried before Mr. T. Wyatt, sessions judge of Rungpore, on the 6th September 1852.

Remarks by the sessions judge.—"From the statement of the prosecutor, (brother of deceased), and the evidence adduced, it was proved that a quarrel had existed between the prisoner (and his brother Hureepershad Roy, committed, but released,) and a zemindar respecting a new *haut* which had been established at Saradohee, in the estate of the zemindar, in the vicinity of an older *haut* belonging to the prisoner and his brother above-mentioned, situate at Fulnapore, and that on Friday, the 30th Phagoon 1258, the prisoner (with his brother and a servant, also committed, but released,) and other persons not yet apprehended, illegally collected together, armed with clubs, *soolfees*, bows and arrows, &c., and went to Saradohee *haut*, and by order of the prisoner shot arrows into the *haut*, when the *haut* people had assembled, with a view to break it up, when one Kabil Mahomed received a wound from an arrow in the side, from the effects of which he died two days after, *viz.*, on the 2nd Cheyt.

"The prisoner, in his defence, alleged that the tehseeldar of Saradohee, with other persons named, attacked his (prisoner's) *haut* at Fulnapore, when prisoner fled with the females of his family to Rajwar (Cooch Behar), and knows not how the deceased Kabil was killed. Prisoner adduces evidence partially in support of his pleas, which is not credited.

"The *futwa* found the prisoner guilty of the 2nd count, in which I concurred."

Sentence passed by the lower court:—Four (4) years' imprisonment, without irons, and a fine of rupees fifty (50) or labor.

Remarks by the Nizamut Adawlut.—(Present : Mr. R. H. Mytton.)—"The prisoner Chunder Kant Doss has appealed, chiefly on the ground that he ought not to have been convicted

on evidence which has been rejected with regard to the other two prisoners. Of those prisoners one was acquitted on proof of an *alibi*, and the other on the ground of improbability of his having instigated the party to shoot arrows, being a mere dependant. The prisoner was named from the first as a leader of the party who attacked the *haut* of Saradohee; and witnesses have deposed positively in the sessions to recognizing him as such.

"To the magistrate he stated that he knew not how the deceased was killed, but that the opposite party may have made wounds in the corpse of some dead person to suit their purpose; that his own *haut* was attacked on the day in question, and he ran away during the attack; but he mentioned nothing about going into Cooch Behar."

"After 'commitment' he cited witnesses to prove that the people of Saradohee in shooting arrows at the people in his *haut* killed Kabil; but still not a word was said by him about escaping to Cooch Behar."

"These same witnesses he cites in the sessions court to prove his *alibi* in Cooch Behar."

"His defences are inconsistent, and there is no reason to believe that he has been improperly found guilty of complicity in the homicide of Kabil; and his appeal is therefore rejected."

"Taking the facts, however, to be true as in proof on the record, the homicide amounts undoubtedly to wilful murder. The explanation given by the sessions judge, and entered in the margin, is not in my opinion satisfactory. Arrows such as these described to have been used are very probable to cause death at any distance that they can be shot. If a

person uses a mortal weapon against another with the strong probability that it will cause death, his offence cannot be reduced to culpable homicide on the plea that it was not his intention to kill but only to frighten. The sentence which has been passed is inadequate to the offence, but cannot under the present law be enhanced."

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December 6.

Case of
CHUNDER
KANT DOSS.

PRESENT :

A. J. M. MILLS, Esq., *Officiating Judge.*

KALI KINKUR GHOSE AND GOVERNMENT

versus

PRAN CHACORE (No. 38), SHEIKH SERJUN (No. 39),
SEKUNDER CHACORE (No. 40), SULLIM CHACORE
(No. 41), ASHUK (No. 42) AND SITTOO CHACORE
(No. 43).

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Case of
PRAN CHA-
CORE and
others.

The appeal
of the prison-
ers was re-
jected, the
evidence for
the prosecu-
tion being
quite conclu-
sive.

CRIME CHARGED.—1st count, dacoity in the house of the prosecutor, during which his brother, Juggo Mohun Ghose, was wounded, and property to the amount of rupees 87-12-0 was carried off; 2nd count, receiving and retaining the said property knowing it to have been obtained by dacoity.

CRIME ESTABLISHED.—Nos. 38, 40, 41, 42 and 43, dacoity attended with the wounding of Kali Sunker Ghose, brother of the prosecutor, and receiving and retaining the property obtained by dacoity knowing it to have been so obtained, and No. 39, of being an accomplice in the above dacoity.

Committing Officer, Mr. W. M. Beaufort, magistrate of Backergunge.

Tried before Mr. A. S. Annand, officiating sessions judge of Backergunge, on the 30th August 1852.

Remarks by the officiating sessions judge.—“ From the statement of Kali Sunker Ghose it appears that on the night of the 30th March last, whilst sleeping alone, he was awake by two men throwing themselves upon him as he lay in his bed, and holding him under the *razye*, when he called out to his half-brother, Juggo Mohun Ghose, who was sleeping in a neighbouring house of the *baree*, that dacoits were killing him. His brother, who had not understood him probably, replied why do you call; that the dacoits then, still keeping deponent under the *razye*, proceeded to plunder the house and took out a large box, in which all his property was. When they released him he went out and found that his brother was senseless, having received two *solfee* wounds, one on the left side and one above the right breast; found the box broken and empty outside the house. He then called the neighbours, who came and saw what had taken place and assisted in recovering his brother. Deponent gave intelligence on the next day at the thanna, and the darogah, having heard that Sekunder (No. 40) and Pran Chacore (No. 38) had been seen on the day before the dacoity consulting together with others in the jungle near to the house of Sekunder, seized them, when Pran (No. 38) confessed, and the rest were captured, and a portion of the property recovered. Deponent's brother, Juggo Mohun, went into

the hospital and was shortly afterwards cured. The property stolen consisted of rupees 40 cash, ornaments and clothes and dishes, amounting in all to rupees 87-12-0. Neither deponent nor his brother could recognize any of the robbers at the time. Knew previously prisoners Nos. 40, 38 and 43, they live five or six *kanees* distant from deponents; has heard that prisoner No. 40 has been previously punished for theft, but knows nothing against the character of the others. The dacoits removed the *jhamp* and entered that way.

"The prisoner No. 38 confessed at the *thanna* and before the magistrate to the effect, that he went with the others on the night of the dacoity to the house of the prosecutor, and remained outside, whilst the others entered and brought out the box, which they broke open, and carried off the contents. Does not know who wounded Juggo Mohun, the brother of the prosecutor, or who had spears. Had nothing in his hands. In this court he denied all knowledge of the case. Prisoner No. 39 confessed to the same effect at the *thanna* and before the magistrate. He denied the charge in my court. Prisoner No. 40 confessed in the *Mofussil* and denied his guilt before the magistrate and in the sessions court. Prisoners Nos. 41, 42 and 43 denied the charge throughout. The evidence of the witnesses established the fact of a dacoity having taken place, as stated by the prosecutor, and to finding his brother wounded as he had deposed. The wounds were inflicted upon Juggo Mohun by a man whom he could not recognize, when he heard his brother call and tried to go to his assistance. They were severe but not of a dangerous nature.

"Property belonging to the prosecutor, and recognized and identified by him and by numerous witnesses, was found in the houses of all the prisoners except No. 39, who has confessed his participation in the robbery.

"It is not clear that Sekunder has been previously punished for theft. There is no record of the case in the magistrate's office. He says himself that he once had a sentence of fifteen (15) days' imprisonment passed upon him by the *kazee* in a *nika* case, but was released by the magistrate on appeal. The other prisoners do not appear to have had anything against their characters previously.

"The jury convicted all the prisoners of the crimes entered in column 10, and concurring in that opinion, I sentenced them accordingly."

Sentence passed by the lower court.—Nos. 38 to 43, each, twelve (12) years' imprisonment, with labor in irons.

Remarks by the Nizamut Adawlut.—(Present: Mr. A. J. M. Mills).—"I agree with the sessions judge in the conviction of the prisoners on the first count, the second being merged therein.

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Case of
FRAN CHA-
CORN and
others.

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Case of
FRAN CHA-
COBE and
others.

They urge in their petitions of appeal that they did not produce the several articles of property found in their possession, but the fact is satisfactorily established; and the confessions of the prisoners Nos. 38 and 39, which implicated the other prisoners and led to their apprehension, are duly attested. The evidence against the prisoners is conclusive, and I reject the appeal."

PRESENT:

W. B. JACKSON, Esq., Judge.

GOVERNMENT

versus

KALA KHAN (No. 7), GHOLAM HOSSEIN (No. 8),
NAZIR MAHOMED, CHOWKEEDAR (No. 9,) WU-
ZEER MAHOMED (No. 10), SHEIKH ZUHER (No. 11)
AND JONABODEEN (No. 12).

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December 8.

Case of
KALA KHAN
and others.

For an af-
fray with cul-
pable homi-
cide, originat-
ing in an ille-
gal distraint,
the party who
illegally dis-
trained was
convicted and
punished, while that
party whose
property was
illegally dis-
trained was
acquitted.

CRIME CHARGED.—Affray attended with the culpable homicide of Meheroolla.

CRIME ESTABLISHED.—Affray attended with the culpable homicide of Meheroolla.

Committing Officer, Mr. W. M. Beaufort, magistrate of Backergunge.

Tried before Mr. A. S. Annand, officiating sessions judge of Backergunge, on the 24th August 1852.

• Remarks by the officiating sessions judge.—“ Government is prosecutor in this case.

“ The prisoners all denied the crime with which they were charged at the thanna, before the magistrate and in my court.

“ It appears from the evidence of the witnesses that on the 7th Bysakh last, seven cows belonging to the prisoner Zuher (No. 11) had been seized for rent, and taken to the cutcherry of Ameerooddeen, talookdar, and afterwards tied up at the house of Sheikh Nyan (witness No. 11). They were brought there by the prisoner Kala Khan (No. 7), a tehseeldar of Ameerooddeen, Gholam Hossein (No. 8) and Nazir Mahomed (No. 9). On the afternoon of that day, the prisoners Sheikh Zuher (No. 11), Jonabodeen, (No. 12), Meheroolla, deceased, and others, armed with light *lattees*, came to rescue them. After some mutual recrimination, Kala Khan (No. 7) called his people to prevent the release of the cattle, when Meheroolla going up to him said, you who are a talookdar's gomashda, have stolen another man's cows; upon which Kala Khan (No. 7) struck him one blow on the head with a *neza*, and Wuzeer Mahomed (No. 10) and Nazir Mahomed (No. 9) struck him each one blow on the head with the *lattee*, when he fell. On this the contest ceased, and Zuher (No. 11),

Jonabodeen (No. 12) and Koodratoollah carried off the body of Meheroolla upon a *jhamp*, taking him to the house of Nazir Mahomed, Chowkeedar, and thence to the house of Zuher. They took away Zuher's cows also with them. Meheroolla died next day in the house of Zuher, from the effects of the wounds he had received. The *sooruthal* states that there was one deep wound on the head and a mark of a blow from a *lattee*. The body was too decomposed to admit of a careful examination by the civil assistant surgeon, who says only that there was a wound on the head, but that he can say nothing about it in detail owing to the state of the body, which was swollen to an enormous size.

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Case of
KALA KHAN
and others.

"The above facts, and there having been a general fight amongst the prisoners on both sides, are fully substantiated by numerous eye-witnesses, and there can be no doubt that all the prisoners are guilty, though in different degrees, of having been concerned in an affray in which Meheroolla was killed. His party are said to have had light sticks in their hands only, whilst those of Kala Khan had regular *lattees*. No person except Meheroolla was wounded in any way, and Kala Khan was the only one who had any weapon but a stick in his hand. He struck one blow only, and the contest ceased immediately Meheroolla fell.

"One of the jury considered all the prisoners equally guilty of an affray and the homicide of Meheroolla. Two others thought the above crimes proven upon Nos. 7, 9 and 10 only; and Nos. 8, 11 and 12 guilty of aiding and abetting in the same. In the latter opinion I concurred, and sentenced the prisoners accordingly."

Sentence passed by the lower court.—No. 7, five (5) years' imprisonment, with labor in irons. Nos. 8, 11 and 12, each, two (2) years' imprisonment, with irons, and a fine of rupees twenty-five (25), or labor, and Nos. 9 and 10, each, four (4) years' imprisonment, with irons, and a fine of rupees fifty (50), or labor.

Remarks by the Nizamut Adawlut.—(Present: Mr. W. B. Jackson.)—"The evidence for the prosecution proves that Kala Khan and others, took away seven bullocks from Zuher's house at night, and at very early dawn placed them in the yard attached to the house of Nyan Mullick, who objected to their doing so. Zuher afterwards came and found them and called Nyan Mullick to witness that his bullocks had been taken from him. Zuher and Jonabodeen afterwards with others, took Meheroolla with them as an arbitrator, and went to get back the bullocks; Kala Khan and his party opposed them, and on Meheroolla calling on him to give up the bullocks he had stolen, adding that Zuher held a receipt for his rent, so that, there

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KALA KHAN
and others.

could be no right to distrain, Kala Khan and his party knocked Meheroolla down and injured him so that he died soon after. Zuher took away his bullocks.

"Now the fact of taking away the bullocks by Kala Khan and others being proved, and the defence being a simple denial of the fact, not an attempt to defend it as a legal distraint, it must be considered as an illegal distraint, especially as it took place at night, and there is no proof of arrear of rent being due, or that it was demanded in a legal manner with the service of a *jumma-wasil-bakee*, as required by Section XIII., Regulation V. of 1812.

"I consider the distraint therefore illegal, and that the owner of the bullocks and his people were justified in demanding restitution and the opposite party, Kala Khan and others, are responsible for all acts done by them in prosecution of their illegal proceedings.

"I see no reason to interfere with the sentence passed on Kala Khan, Gholam Hossein, Nazir Mahomed and Wuzer Mahomed, *alias* Izzutoollah, I acquit Sheikh Zuher and Jonabodeen of all criminality in the case, and direct their release."

PRESENT :

A. J. M. MILLS, Esq., *Officiating Judge*.

MUSST. GUNGA JOLEE

versus

RAMGOLAM ROY.

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Case of
RAMGOLAM
ROY.

The prisoner's defence, an *alibi*, was not proved. His conviction and sentence were therefore affirmed on appeal.

CRIME CHARGED.—Murder of Bhagee Gwala.

CRIME ESTABLISHED.—Culpable homicide of Bhagee Gwala. Committing Officer, Mr. A. A. Swinton, magistrate of Shahabad.

Tried before Mr. W. Tayler, sessions judge of Shahabad, on the 18th June, 1852.

Remarks by the sessions judge.—"The incidents of this case were described in my remarks in Statement No. 6, for April 1852.

"The proceedings in this case disclose a very brutal and unjustifiable assault, ending in the death of the assaulted man.

"The deceased, Bhagee Gwala, was engaged in scraping sugar-cane in the premises belonging to witness No. 1, when prisoner No. 6 (who is a zemindar of the village) called him to bring some straw.

"The deceased declined, on the plea that interruption in his work would cause him loss, when the prisoner seized him by

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Case of
RAMGOLAM
ROY.

the arm and dragged him to a short distance from the place, when the remonstrances of the deceased were here repeated and he struggled, when the prisoner, whose house was close at hand, called out, and the other prisoners ran up, with sticks in their hands.

“ ‘ They then attacked the unfortunate man. Prisoner No. 6 struck him on the back with a stick, and the others stood by, aiding and abetting the assault.

“ ‘ The deceased fell insensible; his relations came and carried him off; and he died on the fourth day.

“ ‘ From the evidence of the witnesses, it is clear that the deceased remained in a state of insensibility from the time he was thus assaulted until his death; that when he died, the prisoners (Nos. 6, 7, 8 and 9) endeavoured to prevent the corpse being carried to the thanna. The medical officer cannot state positively, from the appearance of the body, that death was caused by the blow, but he considers it most probable that it was, and could discover no other cause of death whatever.

“ ‘ The facts above narrated are established by the evidence of eight eye-witnesses. The condition of the deceased, and the state of the wounds, are proved by the *sooruthal*, duly attested by the subscribing witnesses.

“ ‘ It is thus clear that Dheen Roy, who is the *moquddum* of the village, first unlawfully seized the deceased to compel him to perform gratuitous labor; that he then dragged him some distance from the spot where he was engaged in business of his own, and on his struggling to release himself summoned others to his assistance, and so maltreated the unfortunate man that he died, Dheen Roy himself striking him with a stick after he had been felled to the ground by the others not before the court.

“ ‘ The statement of the prosecutrix as to the condition of the wounded man, from the time of the assault to the time of his death, though unsupported by other direct testimony, is sufficiently conclusive, and although the medical evidence does not positively show precisely in what way death ensued upon the blow, yet as far as it goes, it fully corroborates the presumption that it was caused thereby, no other sign of disease or cause of death being perceptible.

“ ‘ No. 6 says, the deceased died of disease. No. 7 makes the same defence. No. 8 says, that he is the uncle of the deceased; that a struggle and fight took place and he ran up to the spot, but he did not strike him. No. 9 pleads an *alibi*.

“ ‘ These pleas are not supported by the evidence.’

“ ‘ Another prisoner was sentenced on the 6th April 1852.

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RAMGOLAM
Roy.

"The presence and active participation of the prisoner in the outrage is clearly established by the evidence of four eye-witnesses.

"In his defence he pleaded an *alibi*, alleging that he went to Banda on the 1st Poos, and returned on the 22nd Jeyt.

"To establish this fact he adduces three witnesses, who depose that they saw him on the day he was going with a *pugree* on his head and the day he returned.

"This is clearly no exculpation whatever.

"The *futwa* convicts the prisoner of culpable homicide and declares him liable to *seesut*.

"The prisoner is the son of Dheean Roy, the principal offender, and he himself took a prominent part in the assault.

"I therefore sentence him to five (5) years' imprisonment, with labor in irons."

Remarks by the Nizamut Adawlut.—(Present: Mr. A. J. M. Mills.)—"The incidents of this case are given in my remarks on the trial of Dheean Roy and others, *see* page 167 of the Decisions for August 1852. The prisoner who had then evaded arrest, and has been since apprehended and convicted of the culpable homicide of Bhagee Gwala, has appealed. His defence, an *alibi*, is not proved; the witnesses merely depose to seeing him going to the place named by him some day in the early part of Poos, and meeting him towards the end of the same month. The evidence to the prisoner striking the deceased with a club is direct and consistent, and I see no reason to distrust it. I confirm the sentence passed on the prisoner, and reject the appeal."

PRESENT :

W. B. JACKSON, Esq., Judge.

GOVERNMENT

versus .

ABHEELAUK MUHTO (No. 2) AND SOUMBER
MUHTO (No. 3).

CRIME CHARGED.—Perjury, when witnesses on the side of Hookoom Chowdry, on the 28th June 1852, deposed, under a solemn declaration taken instead of an oath, before the sessions judge of Shahabad, that ‘they had no connexion whatever with Hookoom Chowdry Feraree, and that the name of the above Hookoom Chowdry is Ramjeetun Roy, son of Puttee Roy, inhabitant of mouza Petwyah,’ and prisoner No. 2, in addition said ‘that Hookoom Chowdry was born in mouza Petwyah’; whereas from the statement of the witnesses Nos. 1, 2, 3, 4, 5, 6, 7 and 8, it is proved that the name of the Feraree, above alluded to, is Hookoom Chowdry, son of Naraïn Dutt Chowdry, inhabitant of Kookoora, where his ancestors had always lived, and that there was no person by name Ramjeetun Roy, son of Puttee Roy, in mouza Petwyah, and that the prisoners Nos. 2 and 3 are of the same caste, as the above-named Feraree; such deposition being false, and having been intentionally and deliberately made on a point material to the issue of the case.

CRIME ESTABLISHED.—Perjury.

Committing Officer, Mr. A. A. Swinton, magistrate of Shahabad.

Tried before Mr. W. Tayler, sessions judge of Shahabad, on the 4th September 1852.

Remarks by the sessions judge.—“The grounds on which the prisoners in this case were committed were thus recorded by me in June 1852.

“Two of the witnesses adduced in support of this plea corroborate the prisoner’s statement, both of them declaring that his name is Ramjeetun Roy, the son of Puttee Roy, and that he has always lived in a different village from that described as his residence.”

“The perpetual and unblushing perjury which prevails in our courts, is an evil of such magnitude that it becomes an important and paramount duty to check and suppress the mischievous practice as far as possible.

“The defect of a mere *alibi*, though palpably false, is so indefinite in its nature that the witnesses who depose to it, can seldom be convicted of mendacity, but in the present case the statement of these witnesses is of such a nature, one of them

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Case of
ABHEELAUK
MUHTO and
another.

The appeal
of the prison-
ers convicted
of perjury was
rejected.

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MURTO and
another.

' swearing that he knew the prisoner from his birth, that I have thought it my bounden duty to direct the institution of further inquiries, with a view to their commitment for perjury.

" ' That their statement is false, appears evident, and as the fact is susceptible of the most complete disproof, I have instructed the magistrate to make such local inquiries as may serve to place the question beyond all doubts, when the necessary order will be passed.'

" The inquiry since conducted having established the falsity of the prisoners' statement beyond all doubt, they were committed by the magistrate.

" Seven witnesses depose to the fact that Hookoom Chowdry, who was sentenced in Jhurs last, is the son of Narain Dutt Chowdry, and was born and lived in mouza Kookoora, and that *no such person as Ramjeetun Roy* lives in mouza Petwyah.

" *Futwa* convicts and declares the prisoners liable to *tazeer*."

Sentence passed by the lower court.—Each, three (3) years' imprisonment, with labor and irons.

Remarks by the Nizamut Adawlut.—(Present: Mr. W. B. Jackson.)—"The two prisoners deposed on oath before a competent tribunal that a party then present on a charge of murder, was named Ramjeetun, and his father's name was Puttee Roy, inhabitants of mouza Petwyah. It is proved by the evidence of a number of witnesses that his name is Hookoom Chowdry, son of Narain Dutt Chowdry of mouza Kookoora; and that the two prisoners now charged with perjury were connexions of his and knew his real name very well. It is evident that these two prisoners, Abheelauk and Soumber, have intentionally made this false statement with a view to screen Hookoom Chowdry from punishment. I approve and confirm the finding and sentence."

PRESENT:

W. B. JACKSON, Esq., *Judge*.

GOVERNMENT AND RAMLAL

versus

MAHADEO (No. 4), HOSSEINI (No. 5, APPELLANT), AND
BOOLAKI (No. 6).

CRIME CHARGED.—1st count, highway-robbery of a necklace valued rupees 250; and 2nd count, robbery of a necklace valued rupees 250, from the person of Ramlal, prosecutor.

CRIME ESTABLISHED.—Highway-robbery of a necklace valued rupees 250.

Committing Officer, Mr. W. T. Tucker, officiating magistrate of Patna.

Tried before Mr. G. Gough, commissioner, with powers of a sessions judge, Patna, on the 27th August 1852.

Remarks by the commissioner.—“The particulars of this case are as follows:—It appears that the prosecutor Ramlal, who is a *mahajan*, was returning from bathing in the river Ganges, on the 19th June last, and when passing a *durgah*, called Shah Kurruk's, was attacked by the prisoners (who were armed with *lattees*) and several others, who have not yet been apprehended. During the scuffle which ensued, the prisoner Mahadeo seized the prosecutor by the hair, and snatched a golden necklace from his person, which he gave to one of his accomplices named Bukshee (not yet apprehended), who decamped with it. The prisoner Hosseini, appears to have been the leader of the party, and is a man of very bad repute, and a most turbulent character. The remaining prisoner, Boolaki, was present and armed with a *lattee*. The attack on the prosecutor and the theft is proved by the clearest evidence against the prisoners, and nothing is established in their defence to relieve them of the charge. The assessors who sat with me found the prisoners guilty of the highway-robbery, and, in accordance with their finding, I sentenced Mahadeo and Hosseini each to seven (7) years' imprisonment, with labor and irons, and the prisoner Boolaki to five (5) years' imprisonment, with labor and irons.”

Remarks by the Nizamut Adawlut.—(Present: Mr. W. B. Jackson.)—“I find no reason to interfere with the sentence passed on the prisoner Hosseini.”

1852.

December 10.

Case of
HOSSEINI,
(appellant),
and others.

The conviction and sentence of the prisoner for highway-robbery affirmed on appeal.

PRESENT:

SIR R. BARLOW, BART., *Judge.*

SHEIKH WUZEER AND GOVERNMENT

*versus*SHEIKH BUXSHEE (No. 10), SHEIKH MOKAH (No. 11),
KHOAZ SHEIKH (No. 12*) AND SHEIKH MEYROO
(No. 13*).

1852.

December 10.

Case of
SHEIKH BUX-
SHEE and
others.

The prison-
ers were con-
victed of cul-
pable homi-
cide, on refer-
ence of the
case by the
sessions judge
for enhance-
ment of pu-
nishment be-
yond what he
could award.

CRIME CHARGED.—Wilful murder of Sheikh Nuzeer.

Committing Officer, Mr. R. Alexander, officiating magistrate
of Mymensing.Tried before Mr. R. E. Cunliffe, sessions judge of Mymen-
sing, on the 5th October 1852.

Remarks by the sessions judge.—“ From the evidence for the prosecution it appears that prisoner No. 10 and the deceased had an intrigue with witness No. 20, which caused No. 10 to be jealous of the deceased, which led to quarrels, one of which occurred early on the morning of the 2nd of Bhadoon, when the deceased abused No. 10, for having prevented his going to Jafferabad, and charging him with lying in wait to beat him, when the prosecutor, deceased's brother, interfered, and nothing further took place. The prosecutor then went to his talookdar's cutcherry, and towards the evening he was informed by his brother Manick, that No. 10 and others had seized, beaten, and taken deceased towards No. 10's house. The prosecutor immediately went to No. 10's house with witness No. 1, and found no one there, but in one of the houses the body of his brother, the deceased, of which a chowkeedar was left in charge and taken next day to the thanna; but it reached the station too decomposed for the surgeon to state the cause of death.

“ The police sent in five eye-witnesses, whose evidence is unworthy of credit. Witness No. 1, deceased's brother, says, he was informed by witnesses Nos. 16 and 17, that deceased had been seized by No. 10, and four or five others whom they did not know, and taken towards his house, which is correct; and that he ran to No. 10's house and saw, under the bamboos near it, the deceased lying, with his hands and feet tied and spread out, and No. 11 poking him in the face with a ruler, and Nos. 10, 12 and 13 standing around with *lattees* in their hands; and that he saw no one else except his brother Manick. Witness No. 2 saw the deceased with his hands tied together above his head, and his feet tied together, and the prisoner beating him with kicks and blows; is prosecutor's brother-in-law; but did not call out or go to prosecutor's house to inform him of what he had seen,

* Acquitted by the sessions judge.

and did not see what became of the body; while in the foudjaree he said he saw the deceased dragged like a dead man and put in the house with its door to the south belonging to No. 10. Witness No. 3 saw the deceased beaten by No. 11 with a ruler, by No. 13 with a *lattee*, and Nos. 10 and 12 with kicks, &c.; saw none of the witnesses, and did not go to inform the prosecutor, whose house is close by. Witness No. 4 saw deceased with hands and feet tied, and beaten by Nos. 11 and 13 with kicks, &c., and that none of the prisoners had anything in their hands; while in the foudjaree he said all four prisoners were beating him. Witness No. 5 said, he saw the four prisoners and four others whom he named beating the deceased; that the prisoners had nothing in their hands, and saw a rope on one of deceased's hands, and that he was not otherwise tied, and that he was standing.

"The evidence of the witnesses Nos. 16 and 17, who are unconnected with the parties, shows that they saw No. 10 and others taking the deceased towards No. 10's house; but it does not appear that he had been or was ill-treated then. This evidence I consider trustworthy; but I have not the same full reliance upon that of witnesses Nos. 10, 11 and 12, on account of the discrepancies in them..

"The defence of the prisoners is, that they were cutting their *dhan*, when hearing a noise towards their village, they ran there, and saw prisoner No. 10 and others had seized and were beating the deceased, whom they could not release, and returned to their work, and on returning home in the evening found deceased's body in No. 10's house, and that they went and reported it to the talookdar; and both named witnesses to prove enmity of the villagers; and No. 10 also named witnesses to the body having been thrown into his house, of which they knew nothing. A few of the prisoners' witnesses deposed that there was enmity with the villagers, who refused to eat with them, apparently on account of the intrigue with witness No. 20.

"The *futwa* of the law officer convicts Nos. 10 and 11 on violent presumption of culpable homicide of the deceased, in which I concur, and would recommend a sentence of fourteen (14) years' imprisonment, with labor in irons, for this is not a homicide arising from a sudden quarrel; enmity existed before, but it is not improbable that some provocation had been given by the deceased, as they had had a quarrel that morning."

Remarks by the Nizamut Adawlut.—(Present: Sir R. Batlow, Bart.)—"The sessions judge distrusts the evidence of the eye-witnesses and relies on that of two witnesses, Nos. 16 and 17. There is no such discrepancy in the depositions of the eye-witnesses as in my judgment would justify their rejection; indeed from the commencement of the investigation by the police up

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Case of
SHEIKH BUX-
SHIEE and
others.

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Case of
SHEIKH BOX-
SHEE and
others.

to its completion in the sessions court, it is conclusive as to the participation at least of the prisoners in the assault which caused the deceased's death. It is not very clearly established by whom the several blows were inflicted, but there can be no doubt that the prisoners were seen dragging the deceased, who was bound to a bamboo, in the direction of the house of prisoner No. 10, where the corpse was seen, with the prisoners standing round it. No examination of the corpse could be held by the medical officer, as it was in the last stage of decomposition, but the inquest before the police proved the violent treatment which the deceased had undergone, and he was found dead almost immediately after, though up to the time he was in perfect health. An attempt has been made by the prisoners to prove that the eye-witnesses carried the corpse into the house of prisoner No. 10, who with No. 11, in answer, stated the eye-witnesses were the assailants. Neither of these pleas is proved; on the contrary, the witnesses for the defence have, with scarcely an exception, deposed to total ignorance on the points they were summoned to prove. It may be fairly inferred that the woman Sopeena Bebee was the true cause of enmity between the deceased and the prisoner No. 10, who is brother of No. 11. I convict the prisoners of culpable homicide and confirm the sentence of fourteen (14) years' imprisonment, with irons and labor, which the sessions judge has proposed to pass on the prisoners Nos. 10 and 11."

PRESENT:

R. H. MYTTON, Esq., *Officiating Judge.*

GOVERNMENT AND HERMAUN WEISZFLAQ

*versus*MODHOOSOODUN DAS (No. 1), UKHYE DAS (No. 2),
AND BISSONATH BHELKY (No. 3, APPELLANT).

1852.

December 10.

Case of
BISSONATH
BHELKY, (ap-
pellant), and
others.

Trial No. 10.

Privy to
theft, sentence
of six months'
imprisonment
and rupees 25
fine, commuta-
ble to labor,
confirmed.

CRIME CHARGED.—1st count, Nos. 1 to 3, theft of property valued at rupees 114-1-6, belonging to the prosecutor Mr. Weiszflaq; 2nd count, No. 3, accessory to the said theft before its perpetration; and 3rd count, Nos. 1 and 2, receiving the stolen property knowing it to have been stolen.

CRIME ESTABLISHED.—Nos. 1 and 2, theft; No. 3, privy to theft after the fact.

Committing Officer, Mr. E. A. Samuells, magistrate of 24-Pergunnahs.

Tried before Mr. E. Bentall, additional sessions judge of 24-Pergunnahs, on the 21st August 1852.

Remarks by the additional sessions judge.—“About 2 A. M. on the 6th of June, the house of Mr. Weiszflaq was found to have been robbed, and much household property, worth about

rupees 80, to have been carried off. Notice of the circumstance was given to the police at a neighbouring *pharee*, and two days afterward a chowkeedar who lived two *cos*s off, having observed Modhoosoodun who was a suspicious-looking man, idling about a tank in his beat, agreed with others to watch the place, and at about 10 or 11 p. m., Modhoosoodun returned to the place with another man, and they were both secured. Modhoosoodun was apprehended on the bank of the tank, and the other (who was Ukhye Das, No. 2,) as he was taking some stolen property out of the water in which it had been concealed. It proved to be the property which had been stolen from Mr. Weiszlaaq. Both of these men confessed to the theft before the police, and again before the magistrate. Owing to their confessions, the prisoner No. 3, Bissonath Bhelky, was apprehended, and he confessed before the police that he was the *ghutuk* in the case, but before the magistrate he confessed only to culpable privy to the crime, of which offence I convict him.

“The prisoner Modhoosoodun Das was sentenced to so severe a punishment as he had once been punished with banishment for seven (7) years, and had on another occasion been imprisoned for two (2) years. As I mentioned in a similar case last month, I entertain some doubt whether I am correct in commuting the punishment of labor for privy to theft to a fine, the same prisoner having been convicted of theft in another case. I have awarded separate punishments for each offence, as the united punishments given to any prisoner do not exceed fourteen (14) years’ imprisonment, and consequently do not require to be consolidated.”

Sentence passed by the lower court.—No. 1, nine (9) years’ imprisonment, with labor and irons, and two (2) years’ additional imprisonment in lieu of corporal punishment, total, eleven (11) years’ imprisonment, with labor and irons, being a consolidated sentence for two offences; No. 2, eight (8) years’ imprisonment, with labor and irons, being a consolidated sentence for two offences and No. 3 to six (6) months’ imprisonment, and to pay a fine of rupees twenty-five (25) or labor, to commence after the expiration of the sentence passed in the following case,—trial No. 11, q. v.

Remarks by the Nizamut Adawlut.—(Present: Mr. R. H. Mytton).—“The prisoner Bissonath Bhelky has appealed, urging that he of his own accord gave information to the police, which he had accidentally obtained against the other prisoners. This was his defence in the sessions court, but it was not supported by any evidence. I see no reason to interfere with the sentence.”

1852.

December 10.

Case of
BISSONATH
BHELKY, (ap-
pellant) and
others.

PRESENT :

R. H. MYTTON, Esq., *Officiating Judge.*

GOVERNMENT AND WILLIAM DAVIS

versus

BISSONATH BHELKY (No. 1, APPELLANT), AND GUNNESS DAS (No. 2).

1852.

December 10.

Case of
BISSONATH
BHELKY (ap-
pellant) and
another.

Trial No. 11.

Sentence of
three years' imprisonment,
with labor in
irons, for be-
ing an acces-
sary after the
fact to theft,
confirmed.

CRIME CHARGED.—1st count, Nos. 1 and 2, theft of property, valued at rupees 32-8-0, belonging to the prosecutor, William Davis; 2nd count, accessories to the above crime both before and after its perpetration; and, 3rd count, No. 1, receiving the above property, knowing it to have been stolen.

CRIME ESTABLISHED.—No. 1, accessory to theft after the fact of property belonging to William Davis, and No. 2, accessory both before and after the fact of theft of property belonging to William Davis.

Committing Officer, Mr. E. A. Samuells, magistrate of 24-Pergunnahs.

Tried before Mr. E. Bentall, additional sessions judge of 24-Pergunnahs, on the 21st August 1852.

Remarks by the additional sessions judge.—“ William Davis lives at Cox's Bungalow, and on the 23rd of May last, some thieves got into his house, and stole a clock, some blankets, a *hookah*, &c. No trace of them was found until the prisoners in the above described case* were apprehended and confessed, and threw light on that as well as on this case. The prisoner Bissonnath stated before the police that he was aware of the plan of stealing, and that he assisted to dispose of the property, and witnesses proved that he showed where the clock had been hid in a tank from which he took it out; but before the magistrate he only accused others, and said that he got a trace of the clock at the thanna. Gunness Das (No. 2) stated before the magistrate that he received and gave information about the crime before it took place, and that he disposed of the *hookah* for eight annas, that he got paid only two annas, and that he kept the money.”

Sentence passed by the lower court.—Each three (3) years' imprisonment, with labor and irons.

Remarks by the Nizamut Adawlut.—(Present: Mr. R. H. Mytton.)—“ The same prisoner (Bissonnath Bhelky) has appealed in this case as in the preceding, and on the same grounds. The proof against him amply supports the conviction. The appeal is therefore dismissed.”

* *Vide* preceding case.

PRESENT :

A. J. M. MILLS, Esq., *Officiating Judge.*

KALEE KINKUR GHOSE AND GOVERNMENT

versus

SUMSHER KHAN, ALIAS SUMS KHAN.

CRIME CHARGED.—Riot attended with the culpable homicide of Suroop Chunder Rooder, and wounding of Seetul Rooder.

CRIME ESTABLISHED.—Riot, in which Suroop Chunder Rooder was killed, and Seetul Chunder was wounded.

Committing Officer, Mr. C. Mackay, principal sudder ameen, exercising powers of a magistrate, Furreedpore, Dacca.

Tried before Mr. C. T. Davidson, sessions judge of Dacca, on the 20th September 1852.

Remarks by the sessions judge.—“The circumstances of this case were detailed in the statement of prisoners punished without reference for the month of February last, from which the following is an extract.

“It appears that the prosecutor's brother, Seetul Chunder Rooder, in Cheyt last, purchased, jointly with Seetul Chunder Adhikaree, some lands from one Ram Chunder, who obtained them under a deed of gift from Buddynath Chuckerbutty. The prisoners Raj Chunder Chuckerbutty and Hurrish Chunder Chuckerbutty deny the deed of gift, and claim the lands as theirs; hence the origin of the present case. The parties appear to have come into collision in Sawun last at the cutting of the first crop after the purchase, and the grain was placed in the hands of one Bholanath, pending settlement of the dispute. The question between them, however, seems to have remained unadjusted, and on the cold weather crop becoming ripe, the prisoners Nos. 1 and 2 went with a large number of men to the land and cut it, and were carrying it off to their houses, when prosecutor's father (deceased) and brother remonstrated with them. They were immediately set upon and assaulted, and the former to so violent a degree, that he died from the effects of it five days after. The above circumstances are deposed to, by a number of eye-witnesses, who also state that they saw the prisoners commit the assault on prosecutor's father and brother. The evidence of the sub-assistant surgeon goes to show that the cause of deceased's death was the injuries he sustained from blows inflicted as he supposes with a *lattee*.”

Four of the witnesses to the fact, and two to the inquest of the body of deceased, have attended and been re-examined, and repeat their former statements. The original deposition of the sub-assistant surgeon, who conducted the *post mortem* examina-

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Case of
SUMSHER
KHAN, *alias*
SUMS KHAN.

The prisoner's plea in appeal of *alibi* not being considered proved, his conviction and sentence were affirmed.

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Case of
SUMSHER
KHAN, *alias*
SUMS KHAN.

tion, taken down at the former trial, has been placed on the record. His removal to Pulnee prevented his being re-examined. The prisoner denies the charge, and pleads an *alibi*; but this plea is not established by the witnesses called by him. The *futwa* convicts the prisoner of being present in a riot in which prosecutor's father was killed and his brother wounded. In this finding-I concur, and have sentenced him as described in column 12 of this Statement."

Sentence passed by the lower court.—Two (2) years' imprisonment, without irons, and a fine of rupees'fifteen (15) or labor.

Remarks by the Nizamut Adawlut.—(Present: Mr. A. J. M. Mills.)—"The particulars of this case are given at pages 761 and 762 of the May Decisions, 1852.

"The prisoner has appealed, pleading an *alibi*, which is not substantiated. Four witnesses depose to his taking an active part in the riot, and I see no reason to doubt the propriety of the conviction. I reject the appeal."

PRESENT:

A. J. M. MILLS, Esq., *Officiating Judge.*

GOVERNMENT AND SHEIKH KHEPOO

versus

RAMCOOMAR GOOHO (No. 9), SUDDANUND GOOHO
(No. 10) AND BUDDUN CHUNG (No. 11).

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December 11.

Case of
RAMCOOMAR
GOOHO and
others.

The prisoners' plea, that the deceased had died in consequence of falling from a tree, disallowed, his death proved to be the result of their having assaulted him. Appeal rejected.

CRIME CHARGED.—Wilful murder of Buchun, brother of the prosecutor Khepoo.

CRIME ESTABLISHED.—Accomplice in the culpable homicide of Buchun.

Committing Officer, Mr. T. B. Mactier, magistrate of Furreedpore, Dacca.

Tried before Mr. C. T. Davidson, sessions judge of Dacca, on the 23rd September 1852.

Remarks by the sessions judge.—"The circumstances of this case are as follows:—The deceased appears to have been employed in thatching Moheem Baboo's cutcherry. The prisoner, Ramcoomar Goocho, who is the Baboo's tehseeldar, sent deceased to hire a boat for the Baboo's naib, who was about to proceed to his home. He returned without having procured one, and the prisoner desired him to go again, which he refused to do. The prisoner then used abusive language towards deceased, which he returned; and on this the three prisoners set upon deceased and beat him till he was senseless. They then dragged him underneath a jack tree, and there left him. The next day Ramcoomar Goocho sent deceased to his home in a boat under

the care of Hossein Mollah and Adoo Sirdar, and on the following evening he died. Two eye-witnesses distinctly depose to having seen the prisoners beat the deceased. The sub-assistant surgeon deposes to having examined the body of deceased, and states that, in his opinion, death was caused by the infliction of blows of a *lattee*. The case as above stated, is also supported by the circumstantial evidence. The prisoners deny the charge, and plead that deceased had climbed up the jack tree to steal fruit and had fallen from it, and thereby sustained the injuries which caused his death. The prisoner Ramcoomar has also set up an *alibi*. These pleas are not established by the evidence of the witnesses named by the prisoners. The *futwa* of the law officer convicts them of being accomplices in culpable homicide; and in concurrence therewith they have been sentenced."

Sentence passed by the lower court.—No. 9, five (5) years' imprisonment, with labor and irons; No. 10, three (3) years' imprisonment, without irons and a fine of rupees fifty (50) or labor, and No. 11, three (3) years' imprisonment, without irons, and a fine of rupees thirty (30) or labor.

Remarks by the Nizamut Adawlut.—(Present: Mr. A. J. M. Mills.)—"The prisoners have appealed. They urge attention to their defence that the deceased fell from a tree and died from the injuries he received, but I agree with the sessions judge in rejecting this plea; it is unsupported by any evidence, and has all the appearance of being got up to suggest a doubt of guilt. The deceased appears to have been brutally treated; after being cruelly beaten, he was left all night under a tree. The medical officer gives it as his opinion that the cause of his death is to be attributed to the severe bruises, inflicted apparently with a club, on the chest and upper and left side of the back. I see no reason to doubt the truth of the direct evidence to the prisoners' assaulting the deceased, and reject the appeal."

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Case of
RAMCOOMAR
GOONO and
others.

PRESENT:

J. R. COLVIN, Esq., *Judge.*A. J. M. MILLS, Esq., *Officiating Judge.*

GOVERNMENT AND SADOO BEBEE

versus

BEBEE RUN.

1852.

CRIME CHARGED.—Wilful murder of Feratoollah, *alias* Sooja, son of Sadoo Bebee.

December 13.

Case of
BEBEE RUN.

Prisoner, charged with the wilful murder of a young child, acquitted by the Nizamut Adawlut, the evidence, though causing much suspicion, not raising such a degree of presumption as would authorize her conviction.

Committing Officer, Mr. R. Abercrombie, officiating magistrate of Beerbhoom.

Tried before Mr. R. B. Garrett, officiating sessions judge of Beerbhoom, on the 18th November 1852.

Remarks by the sessions judge.—“The prosecutrix states that early on the morning of the 12th Assin, which corresponds with the 26th September last, she went to bathe, leaving her infant son, a child of eighteen months old, at home, having first called out to the prisoner, who is her husband’s eldest brother’s wife, and lives in a separate house within the same homestead, to look after him. On her return after a short delay the child was missing, and on being questioned, the prisoner asserted she had not seen him; that search was made, but without success; when at about one *puhur* of the day, the prisoner brought home the body of the child from the tank called Bannoo Gurria, and also pointed out to her the spot whence she had taken it up, which is not easily accessible, and whither the child could not have gone by himself. She adds that there has always existed a quarrel between her and the prisoner, and that she suspects the prisoner of having murdered the child through spite.

“Sheikh Goomanee, the village gomashtha, on hearing of the occurrence, proceeded to the prosecutrix’s house, and there saw the body of the child, and heard that the prisoner had brought it home, and had pointed out the place where it had lain in the Bannoo Gurria tank, a place where the child could not have gone by itself. He states that the prosecutrix and the prisoner were always quarrelling. This witness sat on the inquest, and from the appearance of the corpse he is of opinion that death was not caused by drowning, but that the child was probably first murdered and then thrown into the water: a conclusion he draws from the marks observed on the neck and side, and from the fact that the stomach was not swollen.

“Hybet Mullick, the second witness, went to the prosecutrix’s house and saw the child’s body in the arms of Turreekoollah, the husband of the prisoner, who stated that the child had fallen into the water and been drowned. The witness observed

that, from the appearance such did not seem to be the case, when Turreekoolah retorted that 'what is done is done'; that 'should the heavens break up and fall, there is now no remedy.' He also heard that Sudderoodeen and Gholam Nujjuff had seen the prisoner bringing home in her arms the lifeless body of the child. His opinion on the inquest coincides in respect to the cause of death with that of the preceding witness.

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BEBEE RUN.

" Sudderoodeen deposes to having seen the prisoner taking the corpse of the child to her house, as she was passing near to the house of Nuttoo Nikarinee.

" Kangel Sheikh, the husband of the prosecutrix, and father of the deceased infant, was at work in the fields when he was informed that his child was missing; on reaching home he saw the prisoner coming from towards the west, with the corpse in her arms, which was quite wet. He states that the prosecutrix and prisoner were in the constant habit of quarrelling, and that when he went to work in the morning the prosecutrix and prisoner were the only two remaining at home.

" Feloo Myrahee, a near neighbour, deposes to having seen on the morning of the occurrence the prisoner walking along the road, with her own child in her arms, and the deceased following close behind her, and to having heard her call out to the mother of Sudderoodeen, (witness No. 4), who she said was not at home. This witness was peculiarly obtuse and dull of comprehension with regard to the relative position of places, but I see no reason to doubt the main fact to which she deposes.

" Doolal Bebee, the wife of Goberdhun Sheikh, who lives close to the prosecutrix, states, that she saw the prisoner carrying in her arms the deceased child from the direction of the Bannoo Gurria tank. In the magistrate's court she swore that she witnessed the prisoner taking the child up out of the water of the tank (on the very verge of which her house is situated), and when questioned as to the reason of her making a different statement in this court, she declared that she had seen the prisoner do so, but that she had forgotten the circumstance until reminded of it.

" Gholam Nujjuff, also a near neighbour, states, that on hearing the prosecutrix crying he went to the house, and on being told what had happened he questioned the prisoner, who replied that she knew nothing of the child; he then began to search in every direction, and, whilst engaged in looking about the place where the village cows are kept, he saw the prisoner standing alone on the raised banks of a neighbouring tank; she called out to him that the body was not in that direction. He then returned to the house of the prosecutrix, and learnt that her search also had been unsuccessful. Thence he proceeded eastward,

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Case of
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and very shortly after he heard a noise, and people calling out that the child was found. He hastened back, and saw the prisoner carrying the body in her arms, just as she was about to enter her house, and judging from the direction he supposes that she must have come from the Bannoo Gurria tank, near to Nuttoo Nikarinee's house. He is of opinion, from the appearance of the corpse, that the child must have been first killed, and then thrown into the water, as there were marks on the neck and side, and as the stomach was not swollen; and he further states that the prosecutrix and prisoner were continually quarrelling.

"The civil assistant surgeon thinks that death was most likely caused by drowning; that he observed no marks or injuries on the body, though he particularly looked for those mentioned by the darogah.

"The prisoner pleads '*not guilty*,' and states in her defence that Hybet Mullick has, through the instrumentality of the prosecutrix, placed her in her present position; that they have a domestic quarrel, but it has no reference to the children; and that the children of the prosecutrix are as much hers as her own; that the prosecutrix had an intrigue with the son of Gholam Nujjuff, which she interrupted; that the prosecutrix then commenced an illicit intercourse with Hybet Sheikh, whom she cautioned, as she had a daughter nine years of age in the house; and that on that account Hybet entertained a grudge against her; that Kangal Sheikh was the prosecutor, and in the first instance he laid no charge against her, but that afterwards Hybet and Gholam Nujjuff prevailed upon both the parents of the deceased to prosecute; that when the child was lost she was not at home, but was in the house of Munsiff, whither she had gone for some cotton. She has called no witnesses in her defence.

"The law officer is of opinion that the charge of wilful murder is not proved; and considering that, beyond the fact that the prisoner was seen bringing the child home from the Bannoo Gurria tank, there is no evidence against her, and also with reference to the discrepancies in the depositions of the witnesses, which he does not particularize in his *futwa*, he finds the prisoner '*not guilty*,' and entitled to her release.

"In this verdict I cannot agree. To my mind the evidence against the prisoner is quite sufficient to convict her on violent presumption. It is established that she was left alone in the homestead with the child of the prosecutrix on the morning of, and immediately before, the occurrence; and it would also appear that she was made aware of the opportunity, by the prosecutrix calling to her as she went out to bathe, that she had left the child at home, and asking her to look after it; that a family dissenhion, which seems to have been carried on by the prosecu-

trix and prisoner with considerable warmth, existed to furnish a motive for the diabolical act with which the prisoner is charged.

"The evidence of Feloo Myranee, if credited, is a very strong point against the prisoner. I confess I see no reason whatever to doubt its truth. She is a poor ignorant woman, incapable, I think, of retaining in her mind a story she had merely been taught to repeat. Her statement, that she saw the prisoner walking along the road followed close by the deceased child on the morning of the occurrence, is very circumstantial. She seemed able to relate just what she saw, but was too ignorant to give any description of the relative position of the different places in the village. If the deposition of this witness is trusted, it is proved that the prisoner took the child out of the house after the prosecutrix had left it, and was, when seen, at a place which is proved by the evidence of Gholam Nujjuff to have been only ten *haths* from the Bannoo Gurria tank. This is a very important link in the chain of evidence.

"No doubt, I imagine, can possibly exist in regard to the fact of the prisoner having brought home the lifeless body of the child. Her denial before the magistrate and police of having done so, is indicative of a consciousness of guilt. Had the child gone to the tank and accidentally fallen in and been drowned, the probability is she would have said so at once, and thus have effectually averted any imputation upon her character. Her motive in thus producing the corpse is doubtful—it might have been to lull suspicion, it might have arisen from the certainty that the body would be discovered sooner or later; remorse may have prompted her; or the distress of the parents may possibly have caused her to repent; but however this may be, the fact of her bringing home the body apparently from an unfrequented part of the tank, and so quickly after the search had commenced, while it opposes the supposition that the death of the child was the result of accident, supports the conclusion that as she knew where the body was deposited, so also must she have known how it came to be deposited there.

"I do not consider that the discrepancy between the report on the inquest and the deposition of the witnesses who examined the body in the Mofussil on the one side, and the evidence of the civil assistant surgeon on the other, is of much weight. The latter stated to the magistrate that the body was considerably decomposed, and therefore it is possible that the marks observed at the inquest may have been obliterated. At all events, there is no reason to doubt the fact that there were marks on the body after death, visible to the bystanders, who examined it before the skin was at all changed, and their conviction certainly was that the child had been killed before it was immersed. Whether they

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were right or wrong in this conclusion is, in my opinion, a matter of no great importance, though I certainly think that the circumstance confirms the belief that the death of the child was caused by violent means; and with that belief strongly impressed on my mind, I consider that the evidence is sufficient to bring home the perpetration of the murder to the prisoner, and I would therefore recommend that she be sentenced to imprisonment for life in the zillah jail, with labor suitable to her sex."

Remarks by the Nizamut Adawlut.—(Present: Messrs. J. R. Colvin and A. J. M. Mills.)—"We think that the facts in evidence in this case, though justifying much suspicion, do not raise such a degree of presumption as would authorize the conviction of the prisoner. If convicted, the sentence must have been of death, for the act would have been one of deliberate murder, from motives of hatred or malice, of a very young child, whom the prisoner was specially bound to preserve and protect. But, even if the evidence of the woman, Feloo Myra-nee, be fully credited, it amounts only to this, that the prisoner took the child along with her in the direction of the tank. There is no satisfactory proof of any violence having been practised on the child, and there are no eye-witnesses even as to the part of the tank from which the prisoner is said to have admitted that she brought the corpse. Her delay in producing, or pointing out the corpse, and her prevarications in regard to the child having been with her when he met his death, are quite explicable, consistently with the supposition of her innocence, as she might have been alarmed at the possible consequences of making any acknowledgment which might be used unfavorably to herself.

"On the whole, we are not satisfied with the evidence against the prisoner, and therefore acquit her, and direct her release."

PRESENT :

SIR R. BARLOW, BART., *Judge.*

GOVERNMENT

versus

SREEMOTEE OOOJULMONEE, ALIAS OOOJUL
KYBURTNEE.

CRIME CHARGED.—Exposing her infant child with intent to destroy it.

Committing Officer, Mr. C. T. Buckland, magistrate of Hooghly.

Tried before Mr. J. S. Torrens, officiating sessions judge of Hooghly, on the 16th November 1852.

Remarks by the officiating sessions judge.—“The prisoner, aged about forty years, is charged with exposure of her infant daughter, with intent to destroy it, on the evening of the 16th September last. According to her own statement at the thanna, the report of the police, and the evidence given on the trial, she is the widow of Ishore Ghose, of Burdwan, who died when they were both young, leaving no family. After his death up to Assin last year she lived in Kishnaghur with one Kaleesunker Bostom, to whom she bore two children, one of whom is dead, and the other now with her, aged about three years. In Assin, Kaleesunker died; when she states she cohabited with a man named Jadoo, then living in Culna, who is the father of the infant exposed, and who deserted her when pregnant.

“After he had left her, she wandered betwixt Chogda, in the Kishnaghur district and the village of Soomra in this. In the latter place, she received support from some Boona coolies employed at an indigo factory, and there gave birth to this child in Sawun last. Before the darogah she confesses to having exposed her child with a view to its destruction, as the child was an object of aversion to the people in the neighbourhood, who said it was a witch. The confession written at the thanna records that she had said she supposed by exposing it as she had done, it might be destroyed by jackals. Before the assistant-magistrate she confesses to the exposure with a view to ridding herself of the infant, as she was not able to support it. Before the sessions she states that it had been suggested to her to desert it.

“The witnesses to the confession at the thanna, Nobeen Doss (No. 2) and Nobeen Pyrooe (No. 4), when examined before the sessions, say nothing of the prisoner having alluded to the probability of the child being destroyed by jackals; and state, that she had said she deserted it owing to the destitute condition

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The intent of the prisoner in exposing her child, to destroy it, not being satisfactorily proved, she was sentenced to four years' imprisonment, without labor.

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she was in, and her then having no means of suckling it. Of the other two witnesses to the thanna confession, No. 3, Horish Chunder, is dead, and No. 5, Nobye Ghose, states, that though he attested the paper by direction of the darogah, he was at a distance and did not hear what the prisoner said. Witnesses Gopeenath and Ramchurn Mookerjee (Nos. 6. and 7) depose to the confession before the assistant magistrate, Mr. Chapman. Witnesses Nos. 8 to 13 depose to the finding of the child, to its being that of the prisoner, and its being taken to the thanna by Ram Tunnoo Doss (No. 8); and on its having been suggested that it belonged to her (prisoner) that the darogah had sent and arrested her in the house of Chundun Moordafurrash.

"Ram Tunnoo, the principal witness, who found the child, describes it as having been laid naked in the brushwood, or low jungle, partially covered by it, about seven yards from the road or path to the river Hooghly, and about a quarter of a mile from Chundun Moordafurrash's house, where the prisoner was. The child is described as not having been in an exhausted state when found or having been apparently long exposed. It is now being suckled at the breast of the mother in a healthy state.

"The *futwa* of the law officer finds the prisoner 'guilty' of the charge. I agree with him, though the actual desire for the destruction of the infant is not quite manifest; but there is little doubt that the prisoner wished to rid herself of it, and so long as she could do so, was so reckless of what became of it as to warrant the charge on which she has been committed. From the vagrant and destitute life she has led, she (prisoner) is in appearance and nature apparently of the very lowest grade of humanity, void of all common shame, and appears quite unconscious of the extent of the crime she has committed. As it appears that the crime charged and proved may be liable, at the discretion of the court, to a higher punishment than the sessions can adjudge, I have to submit the papers of the case for the orders of the superior court, and to state that, under all the circumstances of the case, I consider fourteen (14) years' imprisonment with labor, would be a fitting punishment."

Remarks by the Nizamut Adawlut.—(Present: Sir R. Barlow, Bart.)—"The prisoner is reported by the sessions judge as appearing quite unconscious of the extent of the crime she has committed. It is not satisfactorily proved that she exposed the infant with intent to destroy it; it was found near a path leading to the river side. I think that, under the above circumstances, four (4) years' without labor, will be a suitable punishment. The life of the infant was exposed to great risk by the unfeeling neglect of the mother, and her offence must not be lightly dealt with."

PRESENT :

J. R. COLVIN, Esq., Judge.

GOVERNMENT

versus

BISHENDIAL SINGH.

CRIME CHARGED.—Riot attended with severe wounding of Goorpershad Singh, Outar Singh, Retun Singh and Koonja Singh.

CRIME ESTABLISHED.—Riot attended with severe wounding of Goorpershad Singh, Outar Singh, Retun Singh and Koonja Singh.

Committing Officer, Mr. A. A. Swinton, magistrate of Shahabad.

Tried before Mr. W. Taylor, sessions judge of Shahabad, on the 5th August 1852.

Remarks by the sessions judge.—“This case first came to trial on the 3rd September 1851.

“The charge was laid in the calendar,—

“Charged with affray attended with assault and severe wounding Goorpershad Singh, Outar Singh, Retun Singh and Koonja Singh on one side, slightly wounding Ramtawukul Singh, one of the prisoners on the other side.

“The four men wounded in the affray were not committed, but were sent up as witnesses.

“As this was contrary to the provisions of the Construction No. 535, the case was, after a reference to the Sudder Court, returned, and the error pointed out to the magistrate, who subsequently committed them in a supplementary calendar.

“The correspondence* on this point is annexed, and it will

* From the Sessions Judge of Shahabad to the Register of the Nizamut Adawlut, No. 260, dated the 7th August 1851.

“I have the honor to solicit the orders of the Court on the following question, which is one of rather a peculiar character:

“A case of affray was yesterday brought before me for trial, on a commitment by the magistrate, in which the four individuals, who had been most severely wounded, had been made witnesses against the rest.

“The ground of this procedure is not recorded in the final *roobukaree* of commitment, but in a previous proceeding I find that it is rested upon the fact that the other party have not named these men as those who struck them, and there was no proof to the actual perpetration of any act of violence on their part.

“On these grounds the magistrate after first taking their defence, as participants, subsequently, without passing any order of acquittal, administered an oath to them, and admitted them as witnesses in the case.

“This appears to me to be in direct opposition to Construction No. 535.

“Admitting this to be the case, however, I cannot discover any clear rule of procedure for my guidance. Section V. Regulation X. of 1824

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of riot with
severe wound-
ing, and sen-
tence of four
years' impris-
onment with
a fine of ru-
pees 25, up-
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' be satisfactory to know whether I have pursued the proper course in obtaining the amendment of the commitment.

" ' The origin of the dispute is involved in some obscurity, one party affirming that it arose in consequence of prisoner No. 1 carrying off three bullocks, the other that it was caused by a dispute regarding some water-melons belonging to prisoner No. 5.

" ' The affray itself is clearly established. The cause is differently narrated by the witnesses, according to their connexion with either party.

" ' The defence of the prisoners is detailed below.

" ' Prisoner No. 2 says he was a spectator, but not a participant. His witnesses remember nothing.

" ' Prisoner No. 3, that he was two miles off, a fact which his witnesses state, but their evidence is unworthy of credit, being able to give no reason for remembering the date or the day.

" ' Prisoner No. 4 has made an elaborate effort at establishing an *alibi*, and involved three men in such gross and palpable perjury that they have been committed; one is a witness for the prosecution, who after having on the first day of trial distinctly named and pointed out in my presence this prisoner as present and, taking hold of him and touching him with his hand, participating in the affray, the next day, when his examination was resumed, on the *question being put by the prisoner's vakeel* (intermediately engaged) deliberately stated that this prisoner was not present. He was warned and questioned, and given every opportunity of explaining this palpable contradiction, but all he could say was that if he had been asked about the prisoner by name he should have said he was not there. This excuse is absurd. The same would apply to all the prisoners, as he pointed them all out with his hand one by one.

gives special authority to the sessions judge to order on certain grounds the commitment of witnesses to whom a tender of pardon has been made, and I should probably be acting in accordance with the spirit of that enactment were I to adopt this course.

" But the case does not fall strictly within the provisions of this law, and as other rules seem to render the propriety of the procedure questionable, and I am anxious to avoid the possibility of error, I have thought it advisable to postpone the case, and refer the point for the instructions of the Court."

From the Register of the Nizamut Adawlut to the Sessions Judge of Shahabad, No. 839, dated the 15th August 1851.

" The Court, having had before them your letter, No. 260, of the 7th instant, direct me to inform you that they are precluded by established rule from giving an opinion in this form on the point therein mooted. You will dispose of it according to your own judgment, and the Court, should the case come before them in appeal, will then consider it under judicial safeguards and rule it by judicial order."

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“ ‘ The other witnesses are Nujeeb sepoy, of the local guard, who depose to the prisoner having come to the guard-house at the jail, and remained there on the day of the occurrence. Strongly suspecting from the deportment of these witnesses the utter falsehood of their story, I requested the magistrate to inquire were the men on guard, and it appears by the evidence of the jemadar and others that one was *not at the jail at all* on the dates specified. Both their depositions are proved to be false, as each man declared that the other was present.

“ ‘ No. 6 gives evidence of three chowkedars to prove that he stood by only, at a little distance, and did not participate.

“ ‘ I cannot credit this in opposition to the evidence for the prosecution. Human nature too, especially as developed in Arrah, is against the plea. The man is one of the faction, and of a most pugnacious demeanour, which I feel convinced would not admit of his standing close by without taking part in the affray.

“ ‘ No. 7.—This is a man of wealth and influence, and he has set up the best concocted *alibi* in the case, bringing forward an Arrah banker, a stamp-seller, and a peada, who depose to his coming into Arrah on the day of the affray to pay his rent (as ticcadar of an estate) to the above banker, under whom he is lessee.

“ ‘ The witnesses had studied their parts well, but there were points of inconsistency and contradiction which, upon careful cross-examination, betrayed its falsehood. The man had undoubtedly come in, and the witnesses had seen him, but it was evidently on the next day, and they had no compunction in altering the date. The witnesses of No. 8 remember nothing. Prisoner No. 9 gives several witnesses to prove that he was in Arrah, at the house of one Sunkar Singh.

“ ‘ These witnesses speak to the fact, but can give no good reason for remembering the day and the date, which is the cream of such a defence.

“ ‘ Their testimony is full of contradiction, and the demeanour of the witnesses throw the greatest suspicion on the evidence. I reject it without hesitation.

“ ‘ The witnesses examined before the magistrate denied all knowledge of the prisoner's plea.

“ ‘ Prisoner No. 10 gives evidence to prove that he went to perform *devi pooja* at Ghazeepore.

“ ‘ The story is unworthy of belief, being in itself highly improbable; but being desirous for my further satisfaction of ascertaining whether such a *pooja* takes place at that village on the dates specified, the sentence of this prisoner is postponed and the magistrate addressed on the subject. No. 5 gives no

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‘ evidence admitting his presence; he is wounded. Nos. 2 and 3
 ‘ of the supplementary calendar give no witnesses, but refer to
 ‘ the evidence for the prosecution for their exculpation.

“ ‘ The presence and participation of the prisoner is clearly
 ‘ established by the evidence of eye-witnesses.

“ ‘ His defence is an *alibi*, at a mile’s distance, to establish
 ‘ which he adduces the evidence of three witnesses before the
 ‘ court. Before the magistrate his statement was quite different.
 ‘ He there said he was at his house, and had no witnesses to
 ‘ prove.

“ ‘ The witnesses disclaim all knowledge of the exculpatory
 ‘ plea.

“ ‘ The *futwa* convicts the prisoner of the crime charged, and
 ‘ declares him liable to *seesut*.”

Sentence passed by the lower court.—Four (4) years’ imprisonment without irons, and a fine of rupees twenty-five (25), or labor.”

Remarks by the Nizamut Adawlut.—(Present: Mr. J. R. Colvin).—“ The appeal of the prisoner to this court abandons the inconsistent and contradictory pleas of *alibi* which were advanced by him before the magistrate and the sessions judge. It refers only to petty discrepancies in the statements of the several witnesses against him. The prisoner has been named from the first, and there is no ground for doubting the propriety of the conviction, or for interfering with the sentence.”

PRESENT :

A. J. M. MILLS, Esq., *Officiating Judge.*

GOVERNMENT

versus

PIRTUM RUJWAR (No. 2) AND KUNHYE RUJWAR
(No. 3.)

CRIME CHARGED.—1st count, wilful murder of Musst. Choolia, a girl, daughter of Mungur Rujwar; 2nd count, beating and throwing the said girl into a *pyen* with intent to murder her.

Committing Officer, Mr. F. C. Fowle, magistrate of Behar.

Tried before Mr. T. Sandys, sessions judge of Behar, on the 16th August 1852.

Remarks by the sessions judge.—“The tale for the prosecution is, that a theft of grain from the Turwah cutcherry having taken place, the two prisoners, father and son, accompanied by two others of their own accord, during the morning of 10th July last, searched Mungur's (witness No. 1's) house and found none there, but turned some out of Cheta Gwala's (witness No. 10's) house, which, on Mungur's claiming as his own, having been kept for him by Cheta Gwala, the prisoners and their companions pinioned and maltreated him, and the two prisoners seizing his two children, Ghunbha,* a boy, and the deceased Musst. Choolia, a girl, and tying them together by the hair of their heads, plunged them into the village water-course, and poked them with the points of their sticks, in order to extort from them where the stolen grain was concealed. During this oppression the children got separated; Ghunbha escaped, the deceased, according to Mungur Gwala, died at once. The prisoners let go her body, or, in his own words ‘drowned it,’ returned, and recommenced beating him; until, towards evening, the body being found half a mile down the water-course, as reported by Ootim, chowkeedar, (witness No. 7) the prisoner Pirtum (No. 2), and then correcting himself he said Ootim (witness No. 7) loosened his bonds.

“These are the main facts deposed to by the father, Mungur, (witness No. 1), and he is supported in his statements regarding the oppression on his two children and the manner of the deceased's death by his two relatives, the eye-witnesses, Sidhoo Rujwar (No. 2), and Mungur Rujwar (No. 3), who happened to be returning to Burrée Beega, where they reside, and were passing by the water-course which separates the two villages

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The prisoners were acquitted for want of conclusive proof against them, although their guilt was strongly suspected.

* “As named by his father before this Court, as he has been called by different names.”

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of Oomoochuck and Burree Beega at the time of the occurrence. Ootim (witness No. 7), chowkeedar of both villages, gave information of the event at the thanna, as first obtained by him from the two eye-witnesses Nos. 2 and 3, to which his depositions before the police and magistrate were confined, although it may be noted that his original information at the thanna was to the effect that the deceased had been drowned in endeavouring to cross a water-course whilst pursued by, and escaping from, the prisoner Pirtum; but before this court, as will be seen in the sequel, he either knew or attempted to know much more. Witnesses Nos. 8 and 9 depose to mere hearsay, and witness No. 10 to the same, and the search of his own house.

" Ghunbha has never been called, as explained in the magistrate's proceedings, consequent on his nonage; but according to his father and his relatives, witnesses Nos. 2, 3 and 7's, descriptions of him before this court 'breast-high,' and witness No. 3 gives his age as twenty. He cannot be a child, and I should certainly have sent for him had the prosecution appeared trustworthy. The deceased also, according to the same witness, was upwards of thirteen years of age, and which Dr. Diaper supposes may have been her age. The Mofussil inquest held on 11th July indifferently describes two marks of violence, one on the head and the other on the forehead, both bloody, accompanied with loss of hair to the head. The two witnesses to the inquest, Nos. 4 and 5, depose to the loss of hair, but only to one mark on the head as if inflicted with the thrust of a stick, Mungur (witness No. 1) and Ootim (witness No. 7) being as acknowledged their only authority for such an opinion, whilst Dr. Diaper deposes altogether adverse to anything of the kind, that 'although the body was too far decomposed to admit of a dissection, it showed a contused wound behind and below the right ear, with fracture of the skull beneath, which he is of opinion must have been caused by a direct and violent blow, and not from a thrust.' He did not observe anything particular about the hair of the head, except that it was slightly clotted around the wound.

" The prisquers have always pleaded '*not guilty*,' to having heard that the deceased had come to her death by drowning. Before the magistrate Pirtum attributed the prosecution to a grudge by Mungur from his having been suspected of stealing mangoes, extended in his defence before this court to the two eye-witnesses Nos. 2 and 3. Four witnesses called by the prisoners attended, three of whom deposed on hearsay as to the deceased's having died from drowning, though they could not account for the marks of violence found on her head.

" The *futwa* of the law officer acquits the prisoners of wilful murder, considering it was never their intention, in their endea-

vour to extort information, to deprive an innocent child of her life, which probably occurred owing to her youth ; and, adopting the statements of the witnesses to the Mofussil inquest, that the blow was caused by a thrust with a stick, convicts them of culpable homicide.

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"I differ altogether from such a finding. Was there one word of truth in the prosecution, I could only regard such a barbarous outrage as little short of wilful murder. Neither does Dr. Diaper's examination of the body confirm the story of the fatal blow on the head having been caused by a thrust, but 'by a direct and violent blow.' The defence is certainly weak. Something has doubtless happened between the parties, probably the interference of chowkeedars with one another's villages, for Ootim's reply in this respect is incredible—'Why should he have called the village people, or why interfere when the prisoners were tracing out thieves!' which interposes to their making a better defence, under the heinous coloring given to the occurrence by the prosecution. Looking therefore solely at the prosecution, I find in the circumstances generally narrated by it at the very outset much to occasion great distrust. Chowkeedars of a distant village enter another's village, search houses, seize one of its residents, bind him as a thief before his own house, torture his helpless children in his presence, and all this oppression occupying the entire day, and yet not a single eye-witness of such occurrences to be forthcoming out of the two villages of Oomoochuck and Burree Beega except the father himself and his two relatives, the witnesses Nos. 2 and 3! The flimsy pretence is set up that all the villagers were absent at a general village *rendezvous* to repair the village embankments, so that the father Mungur was especially left behind as the only solitary ploughman in the village. Sidhoo (witness No. 2), and Muhgur, (witness No. 3), had been working at the *rendezvous*, and in like manner were the only two thus accidentally returning home together thence so as to witness the occurrence, forsooth, because, according to witness No. 3, they were the only two labourers at the *rendezvous*, all the others being cultivators, whilst, according to witness No. 2, because they were the only two allowed to quit, and this too in the face of Cheta Gwala (witness No. 10) having taken information of what had happened to the *rendezvous*, though denied by Daood Alee (witness No. 9), the *burrayl* of the village. Be this as it may, it is impossible to believe that occurrences of the kind stated by the prosecution could have taken place, and the villagers of both villages at the *rendezvous* not have had timely notice of any one of them. Besides, the father and Ootim say the lad Ghumbha was there, and the father moreover that the two prisoners fetched him from the *rendezvous*. The finding the grain, too, at

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Cheta Gwala's, in the manner narrated by him and Mungur, looks to me pure fiction.

"But I will even try the prosecution on the testimony given by such interested and doubtful witnesses. The father Mungur gave very indifferent evidence both before the police and magistrate, and in both instances not without a great deal of interrogation, but before this court he became quite voluble, entering of his own accord into fuller details than he had done before. He makes out that he was bound and kept prisoner nearly the whole day, either by the prisoners or their companions, under a *bhur* tree, ten *bans* from his own house, whence he saw, as already stated, all that happened to his children at the prisoners' hands, two *russees* distant. In like manner Sidhoo and Mungur, witnesses Nos. 2 and 3, arrive together just in time to see the occurrence. Sidhoo did not see the children's hair tied together, the plunging in the water, or Ghunbha beaten at all; but he saw the deceased twice poked with a stick, which Pirtum did, holding her by the hair with one hand and striking her with the other, but his companion Mungur saw much more, *viz.* the tying the children's hair together, in which Pirtum and Kunhye assisted each other, Kunhye striking Ghunbha once, and Pirtum the deceased twice, all with thrusts of the stick, which Pirtum did holding the deceased by the hair of her head with one hand and poking her with his stick with the other. Now according to Dr. Diaper, it is impossible that the fatal blow observed by him on the body could ever have been struck after any such manner, as it must have been caused 'by a direct and violent blow.' These worthy relatives, too, see their little relatives thus maltreated, and one of them murdered before their eyes in broad day-light, by two strangers, and that, too, close to their own village, to which they quietly pursue their way as if nothing had happened, and do not interfere through fear!—of what? They themselves are two robust, powerful young men, whilst Pirtum is a weak, elderly person and Kunhye a stripling, whom I should say were, either one or both, physically unequal to treating a full-grown lad like Ghunbha, and an ordinary-sized girl like the deceased, in the manner deposed to by these three professing eye-witnesses.

"In a village thus deserted also, according to the prosecution, was there not another soul in the father's house, close to which these outrages continued the whole day? The mother according to the father was out weeding, and did not come near him through fear, and must have remained at Burrée Beega; whereas Ootim (No. 7), as positively contradicts him, and says she was at home, as she told him so, for he met her going to Burrée Beega, searching for her children; as he himself was proceeding to Oomoochuck cutcherry, she turned back and accompanied

him to Oomoochuck, where both together they searched for the children upwards of half a *pukur*, the whole village consisting of six houses!—the father being all this time bound under the *bhur* tree, and saying nothing, whilst observing them thus searching, beyond that, as a prisoner how could he search? and yet this witness acknowledges that the deceased was killed within sight of the *bhur* tree at one *russee's* distance. Further, after this half *pukur's* search, he and the mother went out of Oomoochuck eastward to continue the search, leaving the father bound under the *bhur* tree, but had not proceeded one *russee* when they met Sidhoo and Mungur (Nos. 2 and 3), who informed them the prisoners had killed the deceased, and when asked how under such circumstances he could have helped seeing the deed himself, could make no other reply than that he did not. If there was a word of truth in all this, time and place on his own showing considered, father, mother and himself, as well as the two witnesses Sidhoo and Mungur, must all alike have been eye-witnesses. During all this, too, nothing further is known of Ghunbha, who thus escaped as it were in presence of both his parents, his mother, according to Ootim, being in search of him at the time, and yet he ran away from both, and not towards either of them thus within sight of him. Again, Ootim is contradicted by Sidhoo and Mungur, who also contradict each other. Sidhoo says, 'they met Ootim in the Burree Beega side, half a mile off from the water-course. He was alone, going towards Oomoochuck, searching for the deceased, he cannot say why, and they then told him they had seen the prisoners kill her.' Mungur at first prevaricated, saying they met Ootim at the Oomoochuck water-course, and then correcting himself, 'that it took place in the lane before the door of his own house at Burree Beega, half a *pukur* after the occurrence, when Ootim was going about the village asking if any one had seen the prisoners seize the deceased?'

"There is such a mass of gross improbabilities, grave inconsistencies, palpable contradictions, and manifest concoctions in all that has thus been reviewed, that I not only cannot convict the prisoners on such worthless testimony, but also consider there are some grounds for suspecting Ootim chowkeedar, the first to discover the body, as being at the bottom of the prosecution. It is a case of 'diamond cut diamond,' chowkeedar *versus* chowkeedar, our courts serving the part of cat's-paw, whilst there is enough in the father's character to render his being made a ready tool most probable. He is a runaway *ryot* from a place eight miles distant, and had only been located at Oomoochuck some twenty to twenty-five days prior to the occurrence. Dr. Diaper is of opinion that 'from the clotted blood lying about the adjacent parts, the wound was inflicted during life'; but even

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supposing such appearance had not been simulated, there is still enough of villainy in the habits of the country to which to assign so foul a deed, instead of charging it to the prisoners on such worthless evidence. I accordingly consider both prisoners entitled to their unqualified acquittal."

Resolution of the Nizamut Adawlut, No. 1404, dated 1st October 1852.—(Present: Mr. A. J. M. Mills.)—"The court, having perused the papers above recorded, connected with the case of Pirtum Rujwar and Kunhye Rujwar, and adverting to the remarks contained in the fourth paragraph of the sessions judge's letter of reference, that he should have sent for and examined Ghunbha had the prosecution appeared trustworthy, direct that the proceedings be returned to the sessions judge, with instructions to take the deposition of the above-named youth on oath, if he should be found to have a competent discretion, and understand the nature of an oath. He will then call upon the prisoner for a further defence, and upon the law officer for a fresh *futwā*, and submit his proceedings, with those now returned, accompanied by such observations as he may see fit to offer, for the consideration and orders of the court."

Reply of the Sessions Judge, No. 274, dated 25th November 1852.—"Conformably to the Resolution of the Nizamut Adawlut, dated 1st October 1852, the youth Ghunbha appeared before this court on the 17th instant. As a precautionary measure his mother, Musst. Pheynknee, the three eye-witnesses, and Ootim chowkeedar, (witness No. 7,) were also summoned. All attended except the father, Mungur, (witness No. 1,) who had demised in the interim.

"Ghunbha is a very intelligent lad, fourteen to fifteen years of age, four to five feet high, thus corroborating the description given of him by the witnesses during the original trial, as being 'breast-high.' Musst. Pheynknee says her deceased daughter, Musst. Choolia, was three years younger. Finding Ghunbha in every respect competent, he was duly sworn, and deposed as glibly as any of the other witnesses to what I can regard in no other light than as the set tale for the prosecution.

"His mother, Musst. Pheynknee, has also done her best to support Ootim's (witness No. 7) testimony, though materially contradicting him, and replying under examination in the most unsatisfactory manner. She first searched for her children amongst the six dwellings of Oomoochuck, and then proceeding towards Burree Beega met Ootim by the way, who thence accompanied her to Burree* Beega. This directly contradicts Ootim as to her having returned with him to Oomoochuck, and

* "The water-course separates the two villages, Oomoochuck being on its northern and Burree Beega on its southern bank."

together having looked for the children amongst the six houses there. She also found the prisoners guarding her husband ; but in this case, either her husband's and Ootim's or her own evidence, time, place, and alleged occurrences considered, must be false.

" The prisoners, resting on that originally made, set up no further defence.

" The *futwa* of the law officer confirms that originally given by him.

" According to Ootim, Burree Beega and Oomoochuck inclusive are not above three hundred beegahs ; thus the *rendezvous* itself where the villagers had congregated, five to six *russees* off, according to the same witness, and, from whence, according to Ghunbha himself, the prisoners took him away in the presence of the ten or fifteen villagers assembled there, (*vide* Daod Alee, the *burayl* (witness No. 9), and Cheta Gwala (witness No. 10) and Ootim chowkeedar (witness No. 7) contradictory evidence in such respect, to say nothing of the improbability of the villagers submitting to anything of the kind at the hands of out chowkeedars like the prisoners,) similar to every other locality assigned to the whole day's occurrences, so closely connected with the alleged fatal event, must have been within sight or call of the villagers of both villages. Ghunbha says, on escaping during the plunging in the water-course, he ran and hid himself in a sugar-cane field some three *russees* distant, and he did not return home thence till night. Between the sugar-cane field and the water-course there was no obstacle to the sight, yet he saw neither Sidhoo (witness No. 2), nor Mungur (witness No. 3) at the time of the occurrence, and when asked if afraid to return to Oomoochuck, why he did not seek refuge in their houses at Burree Beega, assigned no other reason than fear of the prisoners following him there. He also describes the road to Burree Beega as running close to this sugar-cane field, so that, according to himself, he must there have been within sight and hail of both these witnesses, his relatives, whilst they were returning to Burree Beega immediately after the occurrence. Sidhoo says, this sugar-cane field was only five *bans* off from the water-course, and accounts for not having protected Ghunbha, by taking him home with them, as he had run away a-head, whereas Mungur knows nothing more than that Ghunbha got out of the water-course, and the only excuse he offers for not having protected their little relative, escaping from the tragical scene they thus had witnessed, is, that they themselves also ran away through fright. In this case all three must have run away together. The circumstances thus deposed to are as unnatural as they are inconsistent and contradictory, and had there been

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any degree of truth in the prosecution, they would have been more truthful, however exaggerated, and been supported by more trustworthy and less exceptionable evidence. This rehearing, therefore, only tends the more to confirm the judgment originally expressed by me, and to which I beg to refer."

Remarks by the Nizamut Adawlut.—(Present: Mr. A. J. M. Mills.)—"I have attentively considered the proceedings of this trial, together with the fresh evidence taken under the orders of this Court of the 1st October.

"The gravest suspicion attaches to the prisoners, but on the whole I am not satisfied with the evidence; it is too contradictory and inconsistent to justify a conviction. I acquit the prisoners for want of proof, and direct their release."

PRESENT:

R. H. MYTTON, Esq., *Officiating Judge.*

RAMTUNOO ROY

versus

MOHESH DOME, CHOWKEEDAR, (No. 15) AND PRAN DOME, CHOWKEEDAR, (No. 18,) APPELLANT.

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Case of
PRAN DOME,
(appellant),
and another.

In a case of dacoity, one prisoner who appealed and one who did not appeal, released, the circumstances of the case exciting great suspicion of the prisoners having been convicted on fictitious grounds.

CRIME CHARGED.—1st count, dacoity in the house of the prosecutor, and plundering therefrom property valued at rupees 313-2-0, on the night of the 14th April 1852; 2nd count, knowingly receiving and having in their possession property acquired in the said dacoity.

CRIME ESTABLISHED.—Dacoity.

Committing Officer, Mr. W. J. Longmore, officiating joint magistrate of West Burdwan.

Tried before Mr. E. Bentall, additional sessions judge of West Burdwan, on the 6th October 1852.

Remarks by the additional sessions judge.—"Between 8 and 9 o'clock p. m., on the 14th of last April, there was a party at the house of Ramtunoo Roy, in the village of Beldanga, in the thanna of Sonamooky, when a party of sixteen or seventeen dacoits attacked the house, and carried off property valued at Company's rupees 313. The next day the prosecutor sent word to the darogah that the dacoity had taken place, but he would not accuse any one until the darogah arrived. The man who carried the information did not at the thanna make any deposition, although he afterwards said that he had recognized seven of the prisoners. Each of the prisoners, except Pran Dome, was said to have been recognized by the same

five witnesses, but before me not one of the five witnesses recognized all the prisoners. The average number that they have forgotten to mention is three-fifths, or twenty-one out of thirty-five. In short, no confidence whatever can be placed in the recognition. The thanna is two *coss* from Beldanga, and the darogah arrived there at noon on the 15th of April, and the next day he searched the house of Mohesh Dome and Gour Dome; they are chowkeedars of Belchunderpore, which is half a *coss* from Beldanga, and they occupy different rooms of the house. They were not found at home; but the darogah having sat down on the back of the house, they were summoned to his presence. Their house was then searched by three villagers and one or two police burkundauzes, and after all the rest of the property had been brought out, the prisoners were directed to bring out their rice *harees*, and in the *haree* of each prisoner was found one of a pair of silver *mul*, which the prisoners denied all knowledge of. A dacoit is not likely to have hidden plundered property in his own jar of rice, and two men are not likely to have done the same thing. The law does not prohibit the lower grades of police from entering houses to search them, but it is better to employ villagers to do so. The circumstances are so suspicious that I cannot convict the prisoners on this evidence. But Mohesh (No. 15) confessed both before the darogah and the deputy magistrate that he was at the dacoity. He says that he was influenced by Meer Kureem, burkundauz, to do so; but there is no evidence of that, and I convict him on his own confessions of the first charge when holding the office of chowkeedar. Pran Dome was not said to have been recognized among the dacoits; he lives at Chitanpore, of which village he is the chowkeedar; it is one *coss* from Beldanga. He was suspected, owing to the confession of Mohesh Dome. His house was searched, and the floor of it was dug, and at a place which appeared to have been lately smeared over, the earth below was damp, and some ornaments, which the prosecutor claims, were found. The persons who searched the house were the darogah himself, one Taronee, a dependant of the darogah, and two villagers; and according to the evidence of the latter, the ornaments certainly were dug up in the house. I find the prisoner guilty of having had plundered property in his possession."

Sentence passed by the lower court.—No. 15, fourteen (14) years' imprisonment with labor and irons, and No. 18, ten (10) years' imprisonment, with labor and irons.

Remarks by the Nizamut Adawlut.—(Present: Mr. R. H. Mytton.)—"The prisoner Pran Dome has alone appealed, but there are circumstances of so much suspicion attaching to the whole case, that under the power vested in this court I have

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thought it proper at the same time to consider the case also as against Mohesh Dome.

"The sessions judge has shown that the original grounds of apprehension of the prisoners on trial before him were utterly untrustworthy. Five men pretended to have recognized seven dacoits at the time of the dacoity, a most improbable circumstance, and each of the five the same identical men, which is still more improbable. Moreover not one of them adhered to his story when before the sessions. Property was found in the houses of two, as observed by the sessions judge, in a very suspicious manner. A confession was obtained from one of them (Mohesh), but the only two witnesses to that confession produced at the trial are two of the above-noticed untrustworthy eye-witnesses. In this confession the name of Pran Dome occurs, but in that before the magistrate his name is not stated, but he is indicated probably as Tunoo's father. In a house which this prisoner states was not occupied by him, but by his son who is now in jail, in a spot which *the darogah directed to be dug up*, was some property claimed by the prosecutor. This prisoner has from the first denied all knowledge of it; he declares, and there is no reason to doubt the truth of this, that the prosecutor is a connexion of the darogah, and that he had given evidence in a case unfavourable to the darogah, which had excited his wrath. Altogether there is so much to excite suspicion that it would not, in my opinion, be proper to uphold the conviction. Both prisoners will be released."

PRESENT :

A. J. M. MILLS, Esq., *Officiating Judge.*

NURUNJUN GHOSE

versus

LOLL MOHUN MATIAH (No. 40), NUFFER MATIAH (No. 41), NOBIN MATIAH (No. 42), GOSAIN DOSS MATIAH, SIMANEDAR (No. 43), SIBOO MATIAH, CHOWKEEDAR (No. 44), AND ROCCA BAGDEE, CHOWKEEDAR (No. 45).

CRIME CHARGED.—1st count, dacoity on the night of the 24th September 1851, corresponding with the 9th Assin 1258, in the house of the prosecutor, wounding him with a sword and *tanghee*, and plundering therefrom property to the value of rupees 19-4-6; 2nd count, knowingly receiving and keeping in possession property acquired by the above-mentioned dacoity; 3rd count, accessories before and after the fact of the above; and 4th count, belonging to a gang of dacoits.

CRIME ESTABLISHED.—Dacoity in the house of the prosecutor, and wounding him slightly with a sword and *tanghee*, and plundering therefrom property of the value of rupees 19-4-6.

Committing Officer, Baboo Jogeshchunder Ghose, deputy magistrate of Gurbettah, West Burdwan.

Tried before Mr. P. Taylor, sessions judge of West Burdwan, on the 4th October 1852.

Remarks by the sessions judge.—“There was nothing peculiar in the circumstances of this dacoity. The prosecutor received two very slight sword or *tanghee* wounds, or rather chips, on the head and arm, from one of the party, who most probably applied the edge of the weapon used by way of intimidation. No one else was hurt. It appeared that the chowkeedar was asleep in the verandah, or outer open chamber, of a neighbouring house, and was kept a prisoner there until the crime had been consummated.

“Traces, consisting of foot-steps, bits of cotton, a broken straw *pitara*, some wisps of tow, and an earthen vessel, were left by the dacoits, which were followed up by the jemadar of thanna Khotalpore, next day, as far as a village named Kalagram, on the banks of the Dalkeshur River. Being unable to do more at that time, the jemadar returned to the prosecutor's house, took his deposition, containing a list of the stolen property, and made the *sooruthal*. That night the darogah arrived, and on the morning of the next day (11th Assin), mustered the village police, when it was found that Rughoonath Matiah, chowkeedar

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The several pleas advanced by the prisoners in their petition of appeal, having been overruled, it was rejected.

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of Basdebpore (witness No. 17 of the calendar, who has absconded,) was not present. Roopkatalia, Chowkeedar, (witness No. 1), was sent for him, whereupon he appeared and informed the darogah that he had heard the noise of the dacoity, and seen the prisoner Nuffer (No. 41), who had said that morning that he was going to Calcutta, running home shortly after it. Nuffer was then apprehended and questioned. He, after some pressing, said that Loll Mohun Matiah (prisoner No. 40) knew where the property was, and must be seized before it could be discovered. That individual was soon found, and he and Nuffer proceeded with the darogah to a tank called the Dutto Pooshkurnee, from which they produced a *khoolaree* and a broken earthen pot containing certain play-things, and other small articles, which were recognized by the prosecutor. The prisoner Nuffer was then urged to give up his share of the spoil, when he declared that the only article he had received was a *goon*, or large sack; that he had forgotten where it was, and that all the rest of the stolen property had been carried off by accomplices, who lived on the other side of the Dalkeshur River in the jurisdiction of thanna Indoss, of East Burdwan, among whom he orally named the prisoners Nos. 42, 43, 44 and 45, as well as another named Mungla, who has eluded justice. The houses of Loll Mohun and Nuffer were then searched without result, and the written confession of the former was taken that night. This named the above prisoners and one Shunker Matiah, gave particulars of the dacoity, and mentioned the sack obtained by Nuffer, the complicity of the chowkeedar, and the wounds received by the prosecutor, which had, he said, been inflicted by the prisoner Rooca (No. 45) with a short sword. A second deposition had been taken from the prosecutor on the morning of the above day, in which, after withdrawing certain suspicions expressed in his previous one against his neighbours Mooktaram Ghose, Kisto Ghose, Gooroochurn Ghose and the chowkeedar Komul Matiah, he gave a long list of persons resident on the other side of the Dalkeshur River, whom he suspected of the dacoity. This list must have been suggested to the prosecutor by the police for their own convenience, as is usually the case when they desire to obtain a basis for searching the house of the inhabitants of a whole village, but I could not elicit proof of such having been the case. An amended list of property was appended to this deposition, which did not contain mention of the articles found in the Dutto Pooshkurnee, but added others that had been forgotten at first. The date of this list had been altered from the 10th to the 11th Assin, but this appears to have been a mere correction of a mistake. Next morning (12th Assin) notice was sent to thanna Indoss and the

posse comitatus visited the villages of Punraie, Basdebpore, Sheikh Dangah, Tintoolmooree and others, situated in that jurisdiction, and searched the houses of the prisoners from No. 42 to No. 45 inclusive, without result, except that the prisoner Siboo (No. 44) was caught in the act of evasion with a shield and a sword, on the edge of which appeared certain marks, which all the witnesses averred were those of blood. The house of the absconded prisoner Mungla was also searched, and a small oil spoon, sworn to by the prosecutor, found. All the said prisoners were then taken back to the prosecutor's village, where prisoners Nos. 40 and 41 proceeded to point out to them the futility of their continuing to conceal the property, and Nuffer even struck the prisoner Rooca (No. 45) before the darogah could prevent his doing so. The result of the dispute was the consent of the prisoners, from No. 42 to No. 45 inclusive, to point out and restore the stolen property, which they did next day with their own hands. Prisoner No. 42, Nobin Matiah, produced a silver hair ornament and a *cutora* out of a sugar-cane *khet*; prisoner No. 43, Gosain Doss Matiah, a *tuslah*, also from a sugar-cane *khet*; prisoner No. 44, Siboo Matiah, a *thalee*, from a bygun *khet*; and prisoner No. 45, Rooca Bagdee, an old cloth and some tow, from a hole in the root of a cotton tree.

"All these articles, except those produced by prisoner No. 45, were at once recognized by the prosecutor, and it was subsequently proven that the tow was exactly similar to some still remaining in the prosecutor's house, and that the cloth had been snatched by the above prisoner from the person of a son of the chowkeedar, who was sleeping in the prosecutor's verandah on the night of the robbery. Neither the articles found in the Dutto Pooshkurnee nor the above, nor the silver hair ornament produced by prisoner No. 42, appeared in the prosecutor's list of the 11th Assin; but the circumstances under which they were taken sufficiently explained their omission. The silver ornament had been snatched from the head of a little girl, and its absence was very probably not remarked. The old *koolaree* and broken handy were also things easily forgotten until found. The cloth and tow have been above accounted for. The brazen utensils were all mentioned in the list. Ram Singh, burkundauz of phandee Pattur Ghattee, thanna Indoss, appeared to have acted most improperly, in taking part with the suspected persons against the Kotulpore darogah and his assistants, and as far as I could judge, causing the production of certain other property, not claimed by the prosecutor, by the prisoners Siboo and others, with the intention of introducing doubt and confusion into the case. Many of the witnesses deposed to quarrels, some, intrusive, and partial conduct on his part, and to his having a

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bad name as the companion of dacoits. Moreover, it came out that he had been stationed at his phandee for an unbroken period of two years. Hurree Buddun Bundopadhea, the darogah of Kotulpore, and his jemadar, appeared to have met Ram Singh's interference with great judgment and temper. The suspected property had been separately reported to the officiating joint magistrate, who had not yet passed any orders regarding it.

"Subsequently the prisoner Nuffer gave up the *goon*, or sack, out of the verandah of his house, in which it seemed to have been placed by his mother, or a woman named Gouree, in whose house he had hidden it. His written confession and that of all the other prisoners was then taken, and the case made over to the deputy magistrate, before whom all the confessions were repeated.

"The occurrence of the dacoity, the *sooruthal*, the apprehension of the prisoners, their Suddar and Mofussil confessions, and the delivery and recognition of the property, were all satisfactorily proven, and the confessions of each prisoner mentioned the complicity of the others.

"The Mofussil and foudarar confessions corresponded with each other in all main features, but contained certain discrepancies of no consequence. The defence made by the prisoners, who all pleaded '*not guilty*' before the sessions court, was perfectly futile, and alleged maltreatment, which their witnesses could not substantiate, nor was there anything in the case to produce the impression that any violence had been resorted to.

"Under such circumstances, I considered the crime of dacoity, with slight wounding with lethal weapons, fully and legally proven against all the prisoners, and sentenced them as noted.

"Sibao's sword and certain arrows, left in the prosecutor's house, which had been lent to one of the dacoits by Mookta, Chowkeedar, ostensibly for sporting purposes, were of course confiscated, and the prosecutor's property returned to him as per list.

"Ram Singh's conduct had been duly noticed by the deputy magistrate of Gurbettah and the magistrate of Burdwan; but I thought it advisable to bring the fact of his having been two years at the phandee to the notice of the superintendent of police, as I understood that it was not customary, either here or in East Burdwan, to alter the localities of employment of the police occasionally, which is a great preventive of collusion and improper intimacy with doubtful characters.

"The deputy magistrate called upon the darogah for certain explanations relative to the dates of the list of property, certificates upon confessions, and delay in taking that of the prisoner

Nuffer (No. 41), and his answers thereto were upon the whole satisfactory. As I considered the conduct of the darogah and jemadar generally judicious and energetic, in this case, I thought it but fair to acquaint the deputy magistrate with my sentiments, with a view to their future encouragement.

"I also reminded him that no order had been passed by him in regard to the separate or suspected property produced by Siboo and others, and that the conduct of the chowkeedar appeared to require notice."

Sentence passed by the lower court.—Nos. 40 to 42, each twelve (12) years' imprisonment with labor in irons, in banishment, and two (2) years more in lieu of stripes, also with labor in irons, total, fourteen (14) years' imprisonment with labor in irons, in banishment; and Nos. 43 to 45, each twelve (12) years' imprisonment with labor in irons, in banishment, and two (2) years in lieu of stripes, also with labor in irons, and two (2) years more in consequence of their being police officers, total, sixteen (16) years' imprisonment with labor in irons, in banishment.

Remarks by the Nizamut Adawlut.—(Present: Mr. A. J. M. Mills.)—"The prisoners have appealed. They deny that they pointed out and gave up the stolen property, and allege that their confessions were extorted from them, but their confessions both before the darogahs and the deputy magistrate have been duly proved, and the evidence to their producing the plundered articles from the places where they had secreted them, as enumerated in the remarks of the sessions judge, is distinct and credit-worthy. The guilt of the prisoners is fully established. I see no reason to interfere with the conviction and sentence."

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PRESENT :

W. B. JACKSON, Esq., *Judge.*

GUNGA PANDE

versus

MAHA'DEO PANDE.

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Case of
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PANDE.

The prisoner's plea that he was not the person referred to by the witnesses, over-ruled. Appeal rejected.

CRIME CHARGED.—Wilful murder of Bhola Pande.

CRIME ESTABLISHED.—Accomplice in the culpable homicide of Bhola Pande.

Committing Officer, Mr. A. A. Swinton, magistrate of Shahabad.

Tried before Mr. W. Taylor, sessions judge of Shahabad, on the 1st June 1852.

Remarks by the sessions judge,—“This is a supplementary calendar.

“The circumstances of the case were thus narrated in Statement No. 6, of October 1847.

“The prisoners denied the charge, and the circumstances of the case are as follows :

“On the 26th August 1847, corresponding with 30th Sawun 1254 F. S., on a Thursday, at 10 o'clock in the morning, prisoner No. 5, with Nos. 6 and 7 present, and others not present, came to the prosecutor's door and began to dig up some earth, for the purpose of mending an embankment which had been broken through by the inundation, when Bhola Pande, deceased brother of the prosecutor, endeavoured to prevent them. Upon this first Rujunt Pande (prisoner No. 5) struck him with a club on the head, and afterwards the prisoners present, and also those not present, attacked him in the same way and wounded him. When Bhola Pande was on the point of death from the wounds he had received, the prosecutor took him to the house of Rujunt Pande, and placed him by his door ; afterwards Bhola Pande, who was fifty years of age, died on the same day at 9 o'clock in the evening, from the effects of the beating. On the next day the prosecutor took the body in a boat to the thanna, and lodged a complaint against the prisoners and others. The thannadar and jemadar apprehended the prisoners in mouza Ekdar, in Muhtoo Roy's house, where they were concealed, and after holding inquiries in the case, forwarded the parties to the magistrate.

“The prosecutor and three eye-witnesses depose on oath to having seen first Rujunt Pande strike the deceased on the head with a club, and also the prisoners present and others not present, and that he (the prosecutor) took the deceased to

Rujunt Pande's house, where he died at 9 o'clock in the evening of the same day ; that the dispute arose on account of Rujunt and others digging up earth from the prosecutor's ground to mend an embankment with, when on being prevented by Bhola Pande the dispute commenced.

" The civil assistant surgeon deposes on oath in this court, that his report to the magistrate, upder date the 29th August last, relative to the examination of the body of Bhola Pande, is strictly true; further that he did not observe any marks of violence on the body; that even if there were, it was in too high a state of decomposition to enable him to detect any marks of blows that might have been inflicted.

" The witnesses to the inquest in the Mofussil state that the body was much swollen, and that blood was flowing from the nose, and that in some parts of the body the skin was cut. This closed the case for the prosecution; and the prisoners on being called upon to state what they had to say in defence, denied having beaten the deceased, and named witnesses, but they were entirely ignorant of that adduced by the prisoners.

" This case was conducted with the aid of assessors, who brought in a verdict of culpable homicide against prisoner No. 5; as being accomplices in the above Nos. 6 and 7; in which finding I concur, and sentence the prisoner No. 5 to five (5) years' imprisonment with labor and irons, and Nos. 6 and 7 to three (3) years' imprisonment without irons, and to pay a fine of rupees fifty (50) each, or in default to labor.

" It is to be regretted that in this case there has been so much delay in forwarding the body to the Sudder station, for it will be observed that the occurrence took place on the 26th August, but the body did not arrive until the 29th, too late, from the high state of decomposition in which it was in, to admit of a medical examination by the civil surgeon. It is, however, satisfactorily accounted for, owing to the inundation at the time rendering the roads impassable.

" Another of the parties concerned was arrested, and sentenced on the 20th October 1847.

" The presence and participation of the prisoner before the court is fully established by the evidence of the eye-witnesses Nos. 1 and 2, and the *sooruthal* and inquest is duly attested.

" The prisoner's defence before the magistrate was a denial of his identity; before the court his plea is, that he was one *coss* off from the scene of the affray.

" Two witnesses examined on his behalf denied all knowledge of the prisoner's plea.

" The *futwa*, acquitting the prisoner of wilful murder, convicted him of being an accomplice in culpable homicide, declaring him liable to *seerasut*."

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Case of
MAHADEO
PANDE.

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Case of
MAHADEO
PANDE.

Sentence passed by the lower court.—Four (4) years' imprisonment, without irons, and a fine of rupees twenty (20), or labor.

Remarks by the Nizamut Adawlut.—(Present: Mr. W. B. Jackson.)—"The ground of the appeal of the prisoner Mahadeo is that he is not the Mahadeo recognized by the witnesses as having committed the offence in question, but I find the witnesses swear positively to his identity as the person they alluded to in their former depositions, and who committed the crime; the plea is not therefore established, and after reading the papers, I find no reason to interfere with the sentence."

PRESENT:

R. H. MYTTON, Esq., *Officiating Judge.*

GOVERNMENT

versus

DOOLUB MUNDUL (No. 1), GOSINEDASS MUNDUL (No. 2), BULIE MUNDUL (No. 3), KISTO CHUNDER MOOKERJEA (No. 4), GOSINEDAS BANERJEA (No. 6) AND DENU MUNDUL (No. 7).

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Case of
DOOLUB MUN-
DUL and
others.

CRIME CHARGED.—Affray attended with the culpable homicide of Gopee Mohun Ghose.

CRIME ESTABLISHED.—Riot with homicide and wounding. Committing Officer, Mr. A. Pigou, magistrate of East Burdwan.

Tried before Mr. J. H. Patton, sessions judge of East Burdwan, on the 9th October 1852.

Riot. What constitutes a riot considered, and sentences upon certain prisoners considered to have been wrongly convicted of riot, reversed as regards some and modified as regards others.

Remarks by the sessions judge.—"The prisoners were committed on a charge of affray attended with culpable homicide, but the evidence only sustains a charge of riot, with the additional count of manslaughter. The affair appears to have been sudden and unpremeditated, and to have had its origin in a dispute to cultivate land. Four persons depose to the quarrel between the respective claimants to the rights of cultivation, and all agree in declaring the prisoners the aggressors in asserting and maintaining that right. They ascribe to the prisoner Bulie Mundul, (No. 3,) the act of assaulting with a heavy shaft of a plough a person of the name of Gopee Mohun Ghose, from the effects of which that individual died the following day; to the prisoner Gosinedas Mundul (No. 2), that of striking with a plough-yoke and wounding slightly Bhyrubchunder Ghose (committed, but released by this court); to the prisoners Kisto Chunder Mookerjea (No. 4) and Gosinedas Banerjea, (No. 6) severally, that of instigating and by their presence and countenance abetting the assault

and violence; and to the prisoners Doolub Mundul (No. 1) and Denu Mundul (No. 7), that of being accomplices in the same. Although the evidence of the civil surgeon throws some difficulty in the way of believing that the blow which caused the homicide was dealt with the instrument made mention of, yet the direct testimony to the fact is so clear and consistent that I cannot reject it for a mere opinion and surmise, backed though they be by the science of medicine and knowledge of the structure of the human frame. The blow might have been applied differently from the manner deposed to, but I cannot doubt that the party accused did so use the weapon as to inflict the injury which eventuated in death. All the prisoners plead *alibis* except the prisoners Nos. 1 and 7, who contend that the deceased was afflicted with asthma and died of that disease. The latter also states that the party released (as per Statement No. 8, connected with this trial,) assaulted him and the other prisoners, and the whole cite witnesses in proof of plea. Seventeen witnesses were examined on their behalf, but their evidence is for the most part too vague and general, and the best of it bears too much the impress of tutoring, to be trusted with any degree of satisfaction or certainty. The *futwa* of the law officer convicts the prisoners of riot attended with homicide and wounding, and declares the prisoners Gosinedas Mundul (No. 2) and Bulie Mundul (No. 3) liable to suffer discretionary punishment by *akoolut*, and the rest by *tazeer*, in the measure of the amount of criminality established against each. I concur in the finding, and pass sentence accordingly."

Sentence passed by the lower court.—No. 2, three (3) years' imprisonment with irons, and a fine of rupees twenty-five (25) or labor; No. 3, four (4) years' imprisonment with irons, and a fine of rupees twenty-five (25) or labor; Nos. 4 and 6, each, two (2) years' imprisonment, with irons, and a fine of rupees fifty (50) or labor; Nos. 1 and 7, each, one (1) year's imprisonment with irons, and a fine of rupees twenty-five (25) or labor.

Remarks by the Nizamut Adawlut.—(Present: Mr. R. H. Mytton).—"All the prisoners in this case have appealed. From the evidence of the four eye-witnesses in the sessions court, the circumstances of it appear to be as follows. On the 28th Assar, Doolub (No. 1), Gosinedas Mundul (No. 2), Bulie (No. 3) and Denu (No. 7) were planting out paddy, when Gopee Mohun Ghose (deceased) and Bhyrub Ghose (wounded) came up, and claiming the land as their own pulled up the plants. A quarrel ensued, but the witnesses separated the contending parties, and they went away, or were going away, when the first-named party met Gosinedass Banerjea (No. 6) and Kishenchunder Mookerjea (No. 4), who appear to be servants of the lessor to the Munduls; they asked them why they were going away, and on hearing their

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DUL, and
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reply, said 'come along, we will see you allowed to cultivate,' or something to that effect. They returned, and again began to plant, when Bhyrub and Gopee Mohun again interfered, and another quarrel ensued, in which Gosinedas Mundul (No. 2) hit Bhyrub and wounded him with the *joail*, or cross board of a plough, and Bulie struck Gopee Mohun with the *ees*, or beam, which blow eventually caused his death.

"Birjmohun Dass (No. 3) deposes that on this occasion Doolub and Denu began the fight with Bhyrub, and Nuffer Bagdee (witness No. 5) that they punched Bhyrub. Mudoo Bagdee, (witness No. 4) states that there was a *mutual* fight, but who were the combatants he did not state, and the attempt to elicit it from him by direct question was not made. Birjmohun (No. 3) is the only witness who states that prisoners Nos. 4 and 6, Kishenchunder and Gosinedas Banerjee, in any way took a part in the quarrel. He deposes that on Doolub and Denu beginning to fight with Bhyrub they cried '*mar, sala!*' The judge from his finding appears to have rejected this portion of Birjmohun's evidence. 'If he had accepted it, he would have found them guilty as principals in the first degree, which the wording of his finding in the tenth column of the Abstract, as originally entered, shows that he did not.

"Biprodass Ghose, on one side covered with mud, and Doolub on the other bleeding from the nose, appeared immediately after the occurrence to the deputy magistrate. The witnesses described the occurrence in the foudaree court as a mutual fight, which in all probability it was, and the magistrate was therefore right in committing for affray. In the sessions court the witnesses trimmed and gave their evidence in such a manner as not to implicate in blame the side of the Ghoses. The judge therefore, apparently considering that it is only the parties on one side that are to blame, has acquitted the Ghoses, and in concurrence with the law officer, found the offence of the other party to be riot with culpable homicide and wounding. It is not clear what amounts to a riot (*hungama*) in Mahomedan law, and I do not find in any of our own authorities a definition of what constitutes that offence under our modified system. The commissioners for the revision of the English criminal law have considered the subject in their fifth report, and recommend the offence to be defined nearly as it is already laid down in the best authorities on English law, thus:—'If three or more persons assemble together for the purpose of executing some *unlawful* and *violent act*, or any act whatsoever, under such circumstances of *violence, threats, tumult, numbers, display of arms*, or otherwise as are calculated to create terror and alarm, and shall wholly or in part execute such purpose,'—A. 21, Ch. 6.

"But it is not a riot where three or more persons being assembled together for any lawful purpose happen, on a sudden

'quarrel, to commit a breach of the peace, however violent ;
' A. 25, Ch. 6,'—For, as explained by Archbold, quoting from
Hawkins's Pleas of the Crown 'their meeting was innocent and
'lawful, and the subsequent breach of the peace happened un-
'expectedly, without any previous intention concerning it. In
'such an affray, only those are guilty who actually engage in it.'

"This appears a very proper definition of the offence, and one quite as applicable to this country as to England. I therefore adopt it.

"The party who have been convicted in this case appear to have believed that they had a good title to the land which they were cultivating when interfered with, and there is nothing on the record to show that their belief was incorrect. When the agents of their lessor, *i. e.*, the prisoners Nos. 4 and 6, returned, with them, none of the party appeared to contemplate violence. They did not return in such numbers, with display of arms, or otherwise calculated to create terror and alarm. None of them even had a *lattee* in their hand; they merely trusted to the influence of the position of prisoners Nos. 4 and 6 to protect them in cultivating the land which they had taken. The occurrence, therefore, is not characterized by the features essential to the offence of riot.

"The violence which occurred was sudden and unpremeditated, not within the scope of the design of the party when they returned to the land.

"The acts of each individual should therefore be considered separately, and the whole party should not be held answerable for the violence of the others.

"On this principle, Bulie (No. 3) is guilty of culpable homicide of Gopee Mohun.

"Gosinadas Mundul (No. 2) of wounding Bhyrub. . .

"Doolub (No. 1) and Denu (No. 7) of assault.

"The sentences that have been passed on them are, in this view of the case, too severe, and even in that taken by the sessions judge, the portion which prescribes the imposition of *irons* is illegal under Regulation II. of 1834. The sentences are accordingly modified as follows:—Bulie Mundul (No. 3) will be imprisoned without irons three (3) years, and pay a fine, commutable to labor on non-payment as required by the judge; Gosinadas Mundul (No. 2) will be similarly imprisoned one (1) year with a similar fine.

"No. 1, Doolub, } —will be similarly imprisoned three (3)
,, 7, Denu, } months with a fine of rupees ten (10)
each, commutable as above.

"Rejecting as uncorroborated the evidence of Birjmohun against Nos. 4 and 6, and holding that the offence of riot has not been established, I do not think that Nos. 4 and 6 are

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guilty of any crime. They went peaceably to look after their master's interests. The violence which took place was, as already observed, sudden and unpremeditated, and these prisoners are not to blame for it: they are acquitted.

"It is observed that one witness (Gopal, No. 2) directly contradicted the evidence he gave in the foudaree court. If not already brought to trial for perjury, this should be done. The sessions judge will report that this instruction has been attended to."

PRESENT:

R. H. MYTTON, Esq., *Officiating Judge.*

GOVERNMENT

versus

KALACHAND DASS TEORE* (No. 1), KHETTRO BAGDY* (No. 2), MOTEERAM THAKOOR (No. 3), DOO-KHEERAM BAGDY* (No. 4), HURRIS CHUNDER GHOSE (No. 5, APPELLANT), TINCOWRI BAGDY* (No. 6), ISHUR BAGDY (No. 7, APPELLANT), NOBIN BAGDY* (No. 8), SONA BAGDY* (No. 9), MUDDOOSOODUN DOME (No. 10, APPELLANT), GOBURDHUN DOME (No. 11, APPELLANT), MUDDOOSOODUN BAGDY (No. 12), MOHUN TEWARY (No. 13), BASOODEB DOOLIA (No. 14, APPELLANT), PREMCHAND MANJEE (No. 15, APPELLANT), KARTICK COWRAH (No. 16, APPELLANT), GOPAL MUSSULMAN (No. 17, APPELLANT), SUBDUL DOME (No. 18, APPELLANT), MODHO BAGDY (No. 19, APPELLANT,) AND GOBIND MUNDUL (No. 20, APPELLANT.)

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Case of
HURRIS
CHUNDER
GHOSE, (ap-
pellant), and
others.

Charge, go-
ing forth to
commit daco-
ity. Sentence,
seven years'
imprisonment,
confirmed.

CRIME CHARGED.—Going forth with a gang of robbers for the purpose of committing robbery.

CRIME ESTABLISHED.—Going forth with a gang of robbers for the purpose of committing robbery.

Committing Officer, Mr. E. A. Samuells, magistrate of 24-Pergunnahs.

Tried before Mr. W. J. H. Money, sessions judge of 24-Pergunnahs, on the 30th September 1852.

Remarks by the sessions judge.—"The Government was prosecutor in this case. The prisoners denied the charge on which they were arraigned in this court, and also before the magistrate. In the Mofussil, prisoner No. 1, Kalachand Teore, prisoner No. 2, Khettro Bagdy, and prisoner No. 20, Gobind Mundul, admit-

* The case of these prisoners was disposed of on appeal by the Nizamut Adawlut on the 25th November 1852,—*Vide Reports for that month, p. 741.*

ted the fact of their going forth for the purpose of committing a dacoity,—the first prisoner having arranged the plan in conjunction with prisoner No. 20, whom he had met in the Allipore jail, and naming several of the prisoners as his accomplices. Prisoner No. 20, Gobind Mundul, alluded also to the conversation in jail with prisoner No. 1; and their making arrangements for a dacoity, in which he appears to have been the principal manager; but he did not, it seems, proceed afterwards with the other prisoners, and was not apprehended with them in Tolly's Nullah, but subsequently, in consequence of the information furnished by the confessions of prisoners Nos. 1 and 2. It appears that early in the morning of the 14th June the Kalee Ghat darogah happened to be on the banks of Tolly's Nullah for a particular purpose, when he observed a suspicious-looking boat passing with a number of persons on board. In consequence of his suspicions, he despatched his burkundauzes, who stopped the boat, with the prisoners from No. 1 to No. 19 on board, and discovered a pistol, a *koolaree*, hammer, a flint and steel, and powder and shot. Witness No. 1, Gosain Dass Bagdy, (admitted as an approver by the magistrate,) pointed out all the prisoners, and deposed to the fact of their having proceeded from a ghaut near the Burra Bazar through the Nullah for the purpose of committing a dacoity in the Soonderbuns, prisoners Nos. 1 and 20, Kalachand Teore and Gobind Mundul, being the principal leaders in the scheme; to their returning with the intention of going to Oottumchand Baboo for some further expenses on the road, and to their being apprehended, *i. e.*, prisoners Nos. 1 to 19, by the Kalee Ghat darogah in Tolly's Nullah, with a pistol, powder and shot, and other implements on board. This Oottumchand Baboo is described as residing in the Burra Bazar, and said to be a receiver of stolen property, prisoner No. 3, Moteeram Thakoor, being his servant. Witnesses Nos. 2, 3 and 4, Mujdene Burkundauz, Jumeer Burkundauz and Peeroo Burkundauz, and witness No. 5, Hanif Khan, darogah, all pointed out the prisoners, and deposed to their apprehension, as described, Nos. 1 to 19, in a boat in Tolly's Nullah, and No. 20 subsequently, from information furnished by the other prisoners. Prisoner No. 1, Kalachand Teore, and prisoner No. 2, Khettro Bagdy, complained of being ill-treated by the police. Prisoner No. 3, Moteeram Thakoor, declared he was sent by his master Oottumchand Baboo, with prisoner No. 1 and other coolies, to take up his master's boat, which had sunk in the Sooderbuns. He cited witnesses to certify to his good character and to his being a servant of Oottumchand Baboo. Prisoner No. 4, Dokheeram Bagdy, and prisoner No. 6, Tincowry Bagdy, declared they were hired to take up a sunken boat. Prisoner No. 5, Hurrischunder Ghose, declared he happened accidentally

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to be at Kalee Ghat at the time, and was unjustly apprehended. Prisoner No. 7, Ishur Bagdy, No. 11, Goburdhun Dome, and No. 12, Muddoosoodun Bagdy, declared they went to Kalee Ghat for religious purposes, and were apprehended unjustly. Prisoner No. 8, Nobin Bagdy, No. 9, Sona Bagdy, and No. 10, Muddoosoodun Dome, declared they were hired to get up a sunken boat. Prisoner No. 13, Mohun Tewary, urged that he happened to be at Kalee Ghaut accidentally, and was unjustly apprehended. Prisoner No. 15, Premchand Manjee, and prisoners No. 16, Kartick Cowrah, No. 17, Gopal Mussulman, No. 18, Subdul Dome, No. 19, Modho Bagdy, declared they were hired by prisoner No. 3 and prisoner No. 1, Moteeram Thakoor, and Kalachand Teore, to get up a sunken boat. Prisoner No. 20, Gobind Mundul, declared he had been unjustly apprehended, and cited witness to certify to his good character. Nothing was elicited in favor of this prisoner or prisoner No. 3, Moteeram Thakoor, calculated to shake the evidence for the prosecution. The jury considered the charge proved against prisoners Nos. 1 to 19 inclusive. It is true that prisoner No. 20, Gobind Mundul, was not apprehended at the same time with the other prisoners, but it is quite clear that he was concerned with them, proceeded a short way, and then left them, as ascertained by his confession, the evidence of witness No. 1, Gosain Dass, and the confessions of the other two prisoners. There is no doubt that prisoner No. 3 was a servant of Oottumchand Baboo, who is well known to the Calcutta police, and has been apprehended on several occasions on various charges. Taking into consideration the very suspicious circumstances under which the prisoners Nos. 1 to 19 inclusive were apprehended, the Mofussil confessions of prisoners No. 1, Kalachand Teore, No. 2, Khettro Bagdy, and No. 20, Gobind Mundul, and the evidence of witness No. 1, Gosain Dass, I convicted them all upon the charge on which they were indicted, upon the strongest presumption, and sentenced them to punishment accordingly."

Sentence passed by the lower court.—Each, seven (7) years' imprisonment, with labor and irons.

Remarks by the Nizamut Adawlut.—(Present: Mr. R. H. Mytton.)—"All the remaining prisoners except Nos. 12 and 13 have now appealed, but I see no reason to interfere with the sentence passed upon them. Their appeal is rejected."

PRESENT :

W. B. JACKSON, Esq., *Judge.*

LALMONEE BEWA

versus

RAMESSHUR MUNDUL.

CRIME CHARGED:—Burglary in the house of Lalmonjee Bewa, from which property to the value of rupees 3-13-0 was stolen.

CRIME ESTABLISHED:—Burglary and theft.

Committing Officer, Mr. C. F. Carnac, officiating magistrate of Moorshedabad.

Tried before Mr. D. I. Money, sessions judge of Moorshedabad, on the 10th October 1852.

Remarks by the sessions judge.—“On the 5th September 1852, at 10 A. M., the prisoner entered the prosecutrix's house, by forcing the lock, and stole therefrom property valued at rupees 3-13-0. Dossee and Monee Bewa, two witnesses, saw the prisoner coming out from the house; and on Monee Bewa's crying out, the prisoner was taken up, while running away, by Gunnes Roy, Groochurn Pramanick, and Luchmun Singh. On searching the prisoner No. 5, suspicious keys were found, which the prisoner evidently kept by him for the purpose of opening locks. The prisoner was formerly sentenced on one occasion on conviction of stealing salt, and on another of knowingly possessing stolen property. He appears to be a professional thief. He named no witnesses as to his character.

“The assessors who sat on the trial pronounced the prisoner guilty of the offence with which he stands charged. Concurring in the verdict, I convicted and sentenced the prisoner accordingly.”

Sentence passed by the lower court.—Five (5) years' imprisonment, with labor and irons.

Remarks by the Nizamut Adawlut.—(Present: Mr. W. B. Jackson.)—“The prisoner was seen by witnesses going out of the house of the prosecutrix, and as they knew the door was fastened, they called out ‘thief;’ the prisoner was immediately after apprehended with a number of false keys in his possession. I think the conviction is right, and see no reason to interfere with the sentence passed by the sessions judge.”

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Case of
RAMESSHUR
MUNDUL.

The conviction and sentence by the sessions judge, were confirmed, in rejection of the prisoner's appeal.

PRESENT :

W. B. JACKSON, Esq., *Judge*.

GOVERNMENT AND ENATOOLAH SHEIKH

versus

BADOOLAH SHEIKH (No. 12) SONAPOOLAH SHEIKH (No. 13), FOIZUDDI SHEIKH (No. 14), COFEELODEE THAKOOR (No. 15), FOIZOOLAH, ALIAS FOIZUDDI (No. 16), FUQEER MAMOOD CAZEE (No. 17) AND PHELOO SICKDAR (No. 18).

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Case of
BADOOLAH
SHEIKH and
others.

The Nizamut Adawlut saw no reason to interfere with the finding and sentence of the sessions judge.

CRIME CHARGED.—1st count, Nos. 12 to 17, having, on the night of the 16th August 1852, corresponding with 2nd Bhadoon 1259, committed a burglary in the house of the prosecutor, and with having stolen therefrom property and monies valued at rupees 242-9-0; 2nd count, accomplices in the above crime of burglary attended with theft; 3rd count, Nos. 12 to 18, accessaries to the said burglary and theft before and after the fact; and 4th count, receiving and having in their possession stolen property knowing it to have been stolen.

CRIME ESTABLISHED.—1st count, No. 12, burglary and theft of property exceeding rupees 100; 2nd count, No. 14, accomplice in the said burglary; 3rd count, Nos. 13, 15, 16 and 17, accessaries before and after the fact; and 4th count, Nos. 13 to 18, receiving and having in their possession stolen property knowing it to have been stolen.

Committing Officer, Mr. J. S. Spankie, assistant joint magistrate of Magoorah, Jessore.

Tried before Mr. R. N. Skinner, sessions judge of Jessore, on the 8th October 1852.

Remarks by the sessions judge.—“From the evidence for the prosecution it appears that on the night of 16th August a burglarious entry was made through mud walls of two huts. Prosecutor was sleeping in another house and did not discover it till the morning. His nephews, who slept in these huts, were children, and were not aware of the occurrence. On examining one of these huts, prosecutor discovered that a large chest was broken open, from which various cloths, and a small box, containing Company's rupees 100, two seals, and pieces of gold and silver, had been extracted. The small box was afterwards found rifled of its contents in the compound.

“Prosecutor sent the chowkeedar to inform the thanna, and awaited the return of his brother to give particulars of the contents of the chest. He then petitioned the darogah, who had

arrived at the spot on the 19th August. Dookee Mamood, Chowkeedar, on the same date, observed that Badoolah appeared to be hiding some property in the jungle near prosecutor's, and ran away, on his approach, to a boat. The chowkeedar pursued, and in the presence of witnesses on board the boat, apprehended the prisoner No. 12, who confessed, and his confession led to the apprehension of others.

"Certain property was found in his possession, part of which has been identified as belonging to the prosecutor.

"Prisoners Nos. 13 to 17 confessed before the police and joint magistrate and produced stolen property and implicated Pheloo. Nos. 13 and 15 deny before me; but their previous confessions are duly attested, and their witnesses disprove nothing.

"Prisoner No. 12, also confesses before me, observing that he with Foizuddi (No. 14), Foizoolah (*mullah*) (No. 16), and Fuqeer Mamood, a relation of Foizuddi (No. 14), committed the crime, and that they went in the boat with Sonoolah Manjee and prisoners Nos. 15 and 17, *mullahs*.

"Fuqeer Mamood escaped from *hajat*. Foizuddi (No. 14) confesses before me to being an accomplice, and to receiving and possessing part of the stolen property, knowing it to have been stolen.

"Prisoners Nos. 16 and 17, also acknowledge before me that they and prisoner No. 15 (*mullahs*), and No. 13 (*manjee*) were also in the same boat, hired by prisoners Nos. 12 and 14, from before till after the fact for three days; that they went to Pheloo's and afterwards to another spot, where the prisoners Nos. 12, 14, and 16, and Fuqeer Mamood, lauded, and afterwards brought a bundle on board; and that they and Nos. 13 and 15 received property which is proved to belong to prosecutor.

"Prisoner No. 18 denied; but certain stolen property found in his house is proved to be prosecutor's. He pretends that the property is his own, and that Foizuddi and Badoolah owe him spite; but he is not supported by his witnesses. He allows that he went to prosecutor's house on 2nd Bhadoon, and prosecutor declares that the said prisoner had been in his house with Badoolah on that day (*i. e.*, the evening preceding the occurrence), and that Pheloo's wife and sister had lodged with him about a month before this event, when there was a quarrel between the prisoner's zemindar and others. Pheloo is distinctly named as the instigator by prisoner No. 12.

"Part of the stolen property found on the other prisoners is proved to be stolen property belonging to prosecutor.

"The jury give a verdict against Badoolah of '*guilty*' of all the four counts, and against prisoners Nos. 13, 14, 15, 16, 17 and 18 of '*guilty*' of second, third and fourth counts.

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others.

" I convict the prisoner No. 12 of burglary and theft of property exceeding rupees 100 and sentence him to five (5) years' imprisonment, with labor in irons.

" Prisoner No. 14 of being an accomplice in a burglary, and of receiving and having in his possession stolen property knowing it to have been stolen, and sentence him to five (5) years' imprisonment, with labor in irons.

" Prisoner Nos. 16 and 17, from their own confessions before the police, the joint magistrate, and in this court, also prisoners Nos. 13 and 15 from their confessions before the police and the joint magistrate, and property found in their possession, of receiving and having in their possession stolen property knowing it to have been obtained by theft, and to being accessaries before and after the fact, and sentence them each to three (3) years' imprisonment, with labor in irons. And prisoner No. 18 of receiving and having in his possession property acquired by burglary knowing it to have been stolen, and sentence him to three (3) years' imprisonment, with labor in irons."

Remarks by the Nizamut Adawlut,—(Present: Mr. W. B. Jackson.)—" I see no reason to interfere with the sentence passed on the prisoners Badoolah, Sonaoolah, Foizuddi, Cofeelo-dee, Foizoolah, Fuqeer Mamood and Pheloo; the stolen property has been found on all of them, and there can be no doubt that they knew it was stolen and have divided it among them."

PRESENT :

W. B. JACKSON, Esq., *Judge.*

R. H. MYTTON, Esq., *Officiating Judge.*

SHEIKH DOOKHOO AND GOVERNMENT

versus

MIRZA MUNGLEEJAN.

CRIME CHARGED.—1st count, wilful murder of Syedoo Chokra, son of the daughter of the sister-in-law of the prosecutor, Sheikh Dookhoo, for the sake of his ornaments; 2nd count, privy to the said offence before and after the fact; 3rd count, having stolen ornaments from the body of the said Syedoo Chokra to the value of rupees 14-10-0; and 4th count, having knowingly received and possessed property acquired by the said murder.

Committing Officer, Mr. C. F. Garnac, officiating magistrate of Moorshedabad.

Tried before Mr. D. I. Money, sessions judge of Moorshedabad, on the 16th October 1852.

Remarks by the sessions judge.—“The prisoner pleaded ‘not guilty.’”

“The particulars of the case are as follows :

“On the evening of the 23rd September 1852 the prosecutor, on his way home from a *darbar*, saw Syedoo, the deceased, his grand-son, a boy of five or six years old, with his ornaments on, sitting on a bamboo *muchan* at the prisoner’s door, with the prisoner Mirza Mungleejan and Emdad his brother, and desired him to follow him. After which the prosecutor came home; but in consequence of the deceased not returning, search was made for him, but to no effect. Buxoo, a servant on the part of the prosecutor, went out to search for the deceased, and looked for him at the house of the prisoner, but could not find him there. He was told by the prisoner’s brother Emdad that his brother, the prisoner, had taken him away to see a *nautch*, and he (Emdad) told the same story to the grand-mother of Munna, a neighbour of the prosecutor, who was also engaged in searching for the missing child. Buxoo returned and informed his mistress, the prosecutor’s wife, that he could find the boy nowhere. At her urgent request he went out a second and third time to search for him, but returned unsuccessful. The prosecutor then went to the house of the prisoner, when Emdad, the prisoner’s brother, made the same statement to him that he had made to Buxoo. The prosecutor then informed Aga Hossein, the prisoner’s father, that his son had taken the boy away and had not yet returned. He replied that he would be back in a few

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Murder of
a child for the
sake of orna-
ments. Sen-
tence death,
although the
body was not
found, the pri-
soner himself
having admit-
ted that the
child was
dead.

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diately. Meanwhile the prisoner Mungleejan came in, and on the prosecutor asking him where the boy was, he answered he did not know.* Information was then given to the thanna, where the prisoner was taken, and the same night the darogah took down his *izhar*. He was twice questioned about the missing child, but gave no answer, and when asked the third time he stated that the deceased had accompanied him to bathe, and that he had left him on the bank when he went into the water, and on his return could not see him. On the darogah's asking whether the boy was drowned, the prisoner answered, 'yes, he was;' and when asked about the deceased's ornaments he admitted that he had them under his bed; upon which the darogah sent him to his house accompanied by the jemadar and burkundaues. The ornaments could not be found under his bed; there was only a knife lying there. About midnight the prisoner pointed out a privy, where two silver *bauks* and two silver *balas* were found buried under ground, and on the following day a silver *huslee* in the same place. The prisoner being asked where and how the boy was drowned, answered that at the Taltollah Ghat another person caused him to be drowned. The darogah made a diligent search, but could find no trace of the body there. The deceased was in the habit of playing with the prisoner, who leads an idle and debauched life.

"The above statement was corroborated by the police jemadar and Buxoo, witnesses, and the latter as well as others identified the ornaments as belonging to Syedoo the deceased. Two witnesses, Ramzan and Teencowree, saw the deceased playing at the prisoner's door. Domun Sheikh, another witness, saw the prisoner carrying the deceased in his arms to the Taltollah Ghat; and another, Ramkanth Rukheet, saw the deceased pass by accompanied by two men towards the south.

"The prisoner before the darogah made the following confessions: that Syedoo Chokra, the deceased, grand-son of the prosecutor, a boy of six years old, was in his house till the evening; about four *dunds* in the evening he accompanied him to bathe; and Peerkhan and Meer Jufer Alce also accompanied him; the former caused the boy to be drowned in the water, and then robbed him of the four *curras* and one *huslee*, which he gave him, saying that after two or three days he would sell them, and divide the proceeds with him. He, the prisoner, took the ornaments home and secreted them in the privy, where they were pointed out and given up by him. He declared that his confession was voluntary, and he repeated the same before the magistrate. Both his confessions were proved by the attesting witnesses.

"In his defence the prisoner stated that the jemadar took him to the thanna, and on the darogah's asking him where the

missing boy was, he had answered he did not know, and he was not aware whence the jemadar had brought the *curras*. He named one witness to prove that he was of good character, but the witness deposed that he knew nothing of him.

"The assessors who sat in the trial convicted the prisoner of the murder of Syedoo Chokra for the sake of his ornaments. There can, from the whole evidence, be scarcely any doubt of the guilt of the prisoner as a principal in the murder of the boy; but as there was no eye-witness to the fact, and as the body was never found, I would recommend that he be imprisoned, with labor and irons, for life in the Allipore jail."

Remarks by the Nizamut Adawlut.—(Present: Messrs. W. B. Jackson and Mr. R. H. Mytton.)—MR. W. B. JACKSON.—"It is proved that the prisoner Mungleejan went away from his own house with the child Syedoo and was seen near Taltollah Ghat with the child in his arms. He confessed to the magistrate that he took the child with him to bathe at night, and at Taltollah Ghat Peer Khan, who went with them, first took the ornaments off the child and then drowned him; that Peer Khan gave him the ornaments to keep. These ornaments were found concealed in the privy of prisoner's house, being pointed out by himself, and are recognized by the relations of the child. I do not believe the story as regards Peer Khan, and have no doubt that the prisoner made away with the child and kept the ornaments himself. The evidence is sufficient to convict the prisoner of being an accomplice in the murder. The fact that the body is not found is no bar to the conviction or sentence, for there is evidence, that of the prisoner's confession, as to how it was disposed of, *viz.*, by being thrown into the river. I would convict the prisoner Mungleejan of murder and sentence him to suffer death."

MR. R. H. MYTTON.—"I concur with Mr. Jackson. The prisoner has on two occasions admitted that the child is dead. No such doubt, as would render it unsafe to pass a sentence of death, exists. By his own admission the prisoner is an accomplice in the murder for the sake of ornaments, and the presumption raised by the evidence, and the circumstance of the whole of the ornaments being in his possession, is, that he was, if not the sole, the principal culprit."

"A sentence of death will issue."

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Case of
MIRZA MUNG-
GLEEJAN.

PRESENT :

R. H. MYTTON, Esq., *Officiating Judge.*TRIAL No. 10.—GOVERNMENT AND RAMCHAND
DHOBEE*versus*

RAMSOONDER BISWAS (No. 16), RAMKOOMAR KHALASEE (No. 17), RAMKOOMAR MUNDUL (No. 18), LAUL MAHOMED (No. 19), KOOBAN KAREEGUR (No. 20), SHEIKH MELYE (No. 21) AND KASHEENATH MUNDUL (No. 22).

TRIAL No. 11.—GOVERNMENT AND SULLAMUT-
OOLLAH*versus*KASHEENATH MUNDUL (No. 14) AND SHEIKH
MELYE (No. 15).

TRIAL No. 12.—GOVERNMENT AND AKBER SIRDAR

*versus*NEETAJ MUNDUL (No. 6), LAUL MAHOMED (No. 7),
RAMSOONDER BISWAS (No. 8), RAMKOOMAR KHALASEE (No. 9) AND KASHEENATH MUNDUL (No. 10).

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Case of
RAMSOONDER
Biswas and
others.*Trials Nos.*
10, 11 and 12.

Riotous attack on prosecutors' houses, by a body of armed men, accompanied by arson, in open defiance of the remonstrances of the police.

Held, on appeal, that a sentence of five years' imprisonment is far too lenient a punishment for such an offence.

TRIALS NOS. 10, 11 AND 12.—CRIME CHARGED.—1st count, riotously, in an armed body, attacking the village of Gopeenathpore, and maliciously setting fire to the house of the prosecutors; 2nd count, riotously, in an armed body, attacking the village of Gopeenathpore; 3rd count, assembling in an armed body near the house of the prosecutors with intent to commit a riot; 4th count, accomplices to the above three crimes; 5th count, aiding and abetting in the forementioned crimes.

CRIME ESTABLISHED.—Being present with an armed body of people in a riotous attack on the homestead of the prosecutor, in which his houses and property were set on fire.

Committing Officer, Mr. T. B. Mactier, joint magistrate of Furreedpore, Dacca.

Tried before Mr. C. T. Davidson, sessions judge of Dacca, on the 23rd September 1852.

Remarks by the sessions judge.—TRIAL No. 10.—“The circumstances of this case are as follow:—Disputes have for some time past existed between the proprietor of the Nakandah and Pykadangah factories and the *ryots* of mouza Gopeenathpore regarding the cultivation of indigo, the former endeavouring to force upon the tenantry an extension of the cultivation, and the latter resisting it. The factory proprietor is also their

landlord, and there are misunderstandings between him and the tenantry respecting remissions of rent. Four or five complaints on either part, i. e., the factory servants against the *ryots*, and the *ryots* against the factory people, of assault, &c., had been lodged in the foudjaree court and disposed of previous to the occurrence of the present case of riot and arson. It appears from the evidence for the prosecution, seven witnesses to the fact having been examined, that on the morning of the 15th December last, a large body of men issued forth from the two factories abovenamed, and assembled at the village of Gopeenathpore, which they attacked, and fired the house of prosecutor, Ramchand Dhobee, and the houses of Sullamutoolah and Akber Sirdar, also *ryots* of the said village. It is not clearly established by what particular person or persons the houses were fired; but, it appears that a small body of the rioters entered prosecutor's house, and it was seen to be on fire immediately afterwards. It will be observed that the attack on the village and firing of the houses were perpetrated in defiance of the police, the mohurir, jemadar, and two burkundauzes, being eye-witnesses of the outrage. The prisoners deny the charge, but have offered no good defence, and the evidence of the witnesses on their behalf in no way exonerates them. The *futwa* of the law officer convicts the prisoners of being present, armed, in a riotous attack upon the village of Gopeenathpore, in which the house of prosecutor was set fire to, and burned down, with the property it contained. In this finding I concur, and have sentenced the prisoners as described."

TRIAL No. 11.—"The circumstances of this case are precisely the same as those in the foregoing one; it may, in short, be considered as one and the same, the only difference being that it is at the prosecution of another *ryot* of the Gopeenathpore village, whose house was also burned down. The defence of the prisoners is the same as set up in the above case, Ramchand Dhobee, prosecutor. The prisoner has been sentenced in the foregoing case, no sentence is therefore recorded against him in this."

TRIAL No. 12.—"The circumstances of this case are the same as those of the two foregoing ones. The prosecution being at the instance of another *ryot* of mouza Gopeenathpore whose house was burned down. The prisoners Laul Mahomed, Ramsoonder Biswas, Ramkoomar Khalasee and Kasheemath Mundul have been sentenced in trial No. 10. The evidence against the prisoner Neetai Mundul (No. 6) is clear. He denies and pleads an *alibi*, but the witnesses called by him do not support it. In concurrence with the *futwa* of the law officer, which convicts him of being present, armed, in a riotous attack upon the village of

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Gopeenathpore, in which the house of prosecutor was set fire to, and burned down, with the property it contained, he has been sentenced as described."

Sentence passed by the lower court.—Ramsoonder Biswas, Ramkoomar Khalasee and Laul Mahomed, *trials Nos. 10 and 12*, each five (5) years' imprisonment, with labor and irons, being a consolidated sentence for *two* offences—Ramkoomar Mundul and Koorban Kareegur, *trial No. 10*, each five (5) years' imprisonment, with labor and irons—Sheikh Melye, *trials Nos. 10 and 11*, five (5) years' imprisonment, with labor and irons, being a consolidated sentence for *two* offences—Kasheerath Mundul, *trials Nos. 10, 11 and 12*, five (5) years' imprisonment, with labor and irons, being a consolidated sentence for *three* offences—and Neetai, *trial No. 12*, five (5) years' imprisonment with labor and irons.

Remarks by the Nizamut Adawlut.—(Present: Mr. R. H. Mytton.)—"All the prisoners in the above three cases have preferred appeals, but offer no good pleas in support thereof. The proof against them is ample for their conviction, and the only fault to be found with the sentences is that they are far too lenient. A tumultuous attack by a large body of men with arms is an offence which should always be visited with severe punishment, but more especially when, as in this case, it was done in open defiance of the remonstrances of the police. The appeals are rejected."

PRESENT :

J. DUNBAR, Esq., Judge.

GOVERNMENT

versus

SREEMUTTIAH OMBICA, ALIAS OMBEE.

CRIME CHARGED.—1st count, wilful murder of Gorobeenee Chokree, the daughter of Kanye Jalliah, for the sake of her ornaments; 2nd count, theft of property of the value of 12 annas from the person of the abovementioned Gorobeenee Chokree; and 3rd count, knowingly receiving and keeping in possession property obtained by the aforesaid murder and theft.

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Case of
SREEMUTTIAH
OMBICA, alias
OMBEE.

Committing Officer Baboo Jogesh Chunder Ghose, deputy magistrate of Gurbettah, West Burdwan.

Tried before Mr. E. Bentall, additional sessions judge of West Burdwan, on the 25th November 1852.

Remarks by the additional sessions judge.—“ Gorobeenee was a child of six years of age living with her father. She had on her head two silver ornaments, worth together 12 annas, tied with a string made of human hair, and worth a pice. On the 15th of August she went out to play, and did not return when she was wanted; so her father sought her in different places, and, among others, at the house of the prisoner, who lives two *beegahs* from him, and of whom he appears from his statement to have had some slight suspicion. She is a widow, and maintains herself by her own industry, her mother occasionally coming to live with her; her parents and her husband lived in the same village; and there appears to have been no prejudice or enmity against her.

The prisoner was charged with the murder of a child for the sake of its ornaments. As the evidence against her was furnished entirely by herself, and she only confessed to having aided in the murder, she was convicted as an accomplice, and, with reference to the circumstances of the case, sentenced to imprisonment for life, in the zillah jail.

“ The day after the child was missing, the prisoner intimated to the father to search in a tank called Banjee-pokur, which he did, and he found the body; in the meantime the prisoner had gone out of the way, but I do not know that she intended to abscond. The body was well decomposed, but could be well identified. The silver head ornaments were not on it.

“ After the body was found, the prisoner was apprehended about a quarter of a *cos* from her own house, in a plain, by the *ghatwals* of the neighbourhood, who took her to her house, where she produced from a rice jar the silver head ornaments, in the presence of the witnesses Nos. 8 and 9, two *ghatwals*, but as there were no witnesses except the police to the transaction, they did not take them from her, but she put them into her clothes until she was afterwards called on to give them up, when the witness No. 15 was present.

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OMEE.

"On the 17th of August information of the murder was taken to the thanna, which is about three and a half *coas* distant from the village where the murder took place; but before the darogah arrived, a jemadar stationed about three *coas* off, heard of the crime, and came to the spot, and took the confession of the prisoner, and sent it off to the deputy magistrate. The prisoner went to her house with the jemadar in the presence of witnesses Nos. 2 and 10, and produced the string of platted hair with which the silver ornaments had been tied on the head.

"Soon after the prisoner was sent off to the deputy magistrate, the darogah arrived, and he reported that he had called the prisoner back and questioned her, and that she agreed to what had been written; but the investigation had previously been finished by the jemadar.

"The prisoner was taken to the deputy magistrate at Gurbettah, where she again confessed on the 19th of August. She stated that she held the child while another woman, called Muktee, strangled her, and that they at first hid the body, and afterwards during the night they removed it to the tank where it was found. The prisoner in her defence stated that the police had recommended her to make the depositions in the Mofussil and in the foudjaree court. She allowed that she was an eye-witness to the murder, and that the ornaments were taken from her house, having been put there by the woman Muktee, who was to have taken them away at night. She states that she did not make the murder known, as she might herself have been accused. A cloth was brought into court, but no witness showed that it belonged to Muktee. The prisoner showed a spot on it which she said was a drop of the blood which came from the mouth of the murdered girl. Muktee had said that she had killed a bug on the cloth, and it looks more like such a mark than a drop of blood.

"The prisoner is tall and strong, and capable of carrying a child of six years of age with ease. The law officer finds her guilty, and I agree with him, having no doubt that she took an active part in the murder; and, however painful it may be, it is my duty to propose that she be punished with death, although I should be glad to find that the court considered a more lenient punishment sufficient. One reason for thinking the extreme punishment unnecessary may be given—it is that the ignorant women who commit such crimes seldom hear of the punishments of others in this country."

Remarks by the Nizamut Adawlut.—(Present: Mr. J. Dunbar.)—"The prisoner from first to last charged Muktee Chasanee with having been the principal in the murder. As the prosecutor asserted his belief in her innocence, no particular inquiry as against her, was instituted by the police. Looking

to the facts—that she admitted that she was in the habit of being frequently at the prosecutor's house; that she was there the day the child was missed; that a cloth with a mark of blood upon it, was found in her house; and that she left the village on the subsequent day; this is to be regretted. It would have been satisfactory to know distinctly where she had been, and what doing during the whole of the day on which the child was missed. The evidence against the prisoner has been furnished entirely by herself. Her confession must be taken as it stands. Upon that I convict her as an accomplice. The plea for mitigation of punishment in cases of this kind, put forward by the sessions judge, could not be admitted and acted upon, with safety to the interests of society; but with reference to all the circumstances of the case, and to the possibility that the prisoner only acted a subordinate part in the tragedy, I sentence her to be imprisoned for life in the zillah jail, with labor suitable to her sex."

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Case of
SHEENMUTTAH
OMBICA, alias
OMBICA

PRESENT:

A. J. M. MILLS, Esq., *Officiating Judge.*

GOVERNMENT

versus

HIRDEHLALL DASS (No. 1, APPELLANT), JHOOMKA (No. 2) AND UCHUL SINGH DASS (No. 3, APPELLANT).

CRIME CHARGED.—1st count, No. 1, fraud, in causing to be changed the name, person, caste, and place of residence of Jhoomka (No. 2) by representing him to be one Shamlall Sao, with intent to prepare a forged *mookhtarnama*, bearing date the 30th May 1851; 2nd count, Nos. 1 and 2, forging the said *mookhtarnama*; 3rd count, No. 1, obtaining the forgery of the said *mookhtarnama*; 4th count, No. 2, fraud in changing the name, person, caste, and place of his residence in order to personify one Shamlall Sao, with intent to prepare the said *mookhtarnama*; 5th count, No. 2, accomplice in obtaining the forgery of the said *mookhtarnama*; 6th count, No. 3, knowingly uttering the said forged *mookhtarnama* in the Dewanny court; 7th count, No. 3, aiding and abetting in the crimes charged against Nos. 1 and 2, and 8th count, privity to the crimes charged against Nos. 1 and 2.

CRIME ESTABLISHED.—No. 1, fraud, in causing to be changed the name, person, caste, and place of residence of Jhoomka (prisoner No. 2) by representing him to be one Shamlall, with intent to prepare a forged *mookhtarnama* bearing date the 30th May 1851, and obtaining the forgery of the said *mookhtarnama*;

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others.

The prisoners were on appeal convicted of giving effect to a forged deed; sentence affirmed.

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ant), and
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No. 2, changing the name, person, caste, and place of residence in order to personify one Shamlall Sao, with intent to prepare a *mookhtarnama*, and being an accomplice in the obtaining of the forgery of the said *mookhtarnama*; and No. 3, knowingly uttering a forged *mookhtarnama* in the Dewanny court.

Committing Officer, Mooftē Eradut Aleē, law officer, with magisterial powers, Tirhoot.

Tried before the Honorable R. Forbes, sessions judge of Tirhoot, on the 23rd August 1852.

Remarks by the sessions judge.—“ This case was committed for trial by Mooftē Eradut Aleē, law officer, with powers of a magistrate, and tried in this court with the aid of assessors, agreeably to Regulation VI. of 1832, and the following are the circumstances of the case, as elicited from the record and evidence :

“ One Shamlall Sao had purchased several decrees held by one Khilput Sao, cases in execution of which were pending before the first principal sudder ameen, and the property of the prisoner Hirdehlall Dass (who was one of the debtors in all the cases) and other prisoners, was under advertisement for sale in satisfaction of Shamlall Sao's decrees to be held on the 2nd June 1851. On that day, before the sale began, the prisoner Uchul Singh Dass presented a petition to the principal sudder ameen with a *mookhtarnama*, purporting to have been executed in his favor by the decreeholder Shamlall, and bearing the seal of the *cazee* of Bhowarra, praying that the sale might be stayed, on the ground of his client, *viz.*, Shamlall, having given Sheonauth Singh a *vakulutnama* to file a *razeenama*, the said Sheonauth Singh having, however, at the instigation of Joykishen Lall and Meer Shumshere Aleē, vakeels, denied the execution of such *vakulutnama*. Upon this the principal sudder ameen sent for the two last-named vakeels, and on interrogating them, they expressed a doubt of the authenticity of the *mookhtarnama*. The principal sudder ameen, then instituting a preliminary inquiry, eventually made over the proceedings and parties to the magistrate, conformably to Section II. Act I. of 1848, and the case having been first referred for trial by that authority to the same first principal sudder ameen, was eventually transferred to the law officer, who committed it for trial to this court.

“ Two persons were accused as eye-witnesses for the prosecution, *viz.*, Sheikh Intiyazooddeen Hossein, the *cazee* of Bhowarra's *mohurir*, and Sheikh Khyrat Hossein, the *cazee*, himself. From their testimony it appears that on the 29th May 1851, the prisoner Hirdehlall Dass, accompanied by one Domun Mullick (acquitted), and another person (name unknown), went to the *cazee*, then at Durbungah, and told him that an adjustment was on the *tapis* between Shamlall, the decreeholder, and himself,

and that as a *razzenama* would have to be filed, he (the *cazee*) would have to attest a *mookhtarnama*, for which purpose the decreeholder himself had also come there. On the morning of the 30th May, or day following, the prisoner Hirdehlall Dass, accompanied by the prisoner Jhoomka (whom the former represented to be the decreeholder Shamlall Sao), and the aforesaid Domun Mullick as the party signing for the decreeholder, and one Junglee Pasban and Gouree Jha as witnesses to the *mookhtarnama* (both the latter though summoned by the foudjaree court not having been found), came before the *cazee*, and the prisoner Hirdehlall Dass producing the rough copy of the *mookhtarnama* in the name of the prisoner Uchul Singh Dass, and the prisoner Jhoomka (representing Shamlall) the necessary stamp paper, gave them to the *cazee*; Hirdehlall Dass at the same time introducing the prisoner Jhoomka by saying to the *cazee* 'this is Shamlall, the decreeholder;' to which the prisoner Jhoomka acquiesced by saying 'my name is Shamlall.' The *cazee's mohurir*, Sheikh Intiyazooddeen Hossein, then engrossed the *mookhtarnama* in the name of the prisoner Uchul Singh Dass on the stamped paper, on which the *cazee* duly affixed his seal. Owing however to the day closing, there was no time to admit of the *mookhtarnama* being that day copied into the register, but the *mookhtarnama* was on the day following, viz., 31st May, made over to the prisoner Jhoomka, or the fictitious Shamlall decreeholder. Both these witnesses deposed to having previously known the prisoner Hirdehlall Dass, and they identify the prisoner Jhoomka with the description given of him as a witness in the *mookhtarnama*. They also stated that the prisoner Jhoomka (when representing Shamlall Dass, decreedar,) said that not being able to write himself he had brought his *mutsud-dee*, Domun Mullick, along with him, to sign for him, which the latter accordingly did.

"As it turned out on cross-examination of the *cazee's mohurir*, Sheikh Intiyazooddeen Hossein, that three other persons, Boonyad Alee and Dilawur Alee, servants of the *cazee*, and Fyzoo, a servant of the *mohurir*, were also present on the 30th May, when the above transaction took place, they were sent for and examined by this court. Two of them, Boonyad Alee and Fyzoo, deposed that they were present and saw the prisoners Hirdehlall Dass and Jhoomka, or the person calling himself Shamlall, and three others, sitting near the *cazee*, and some paper, the name of which they do not know, lying there; that as the *cazee* was about to affix his seal he asked the prisoner Hirdehlall Dass 'which is Shamlall,' to which the former pointing to the latter replied 'this is Shamlall,' and the latter agreed, saying 'my name is Shamlall'; that after this the *cazee* impressed his seal on the paper, and thus they (witnesses) heard the names

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of the two prisoners but did not before this know them. These witnesses also in this court identified the above two prisoners as the persons they had seen before the *cazee*.

“The third witness, Dilawur Alee, deposed that being at the time not very close to where the occurrence was going on, he heard the *cazee* asking the prisoner Hirdehlall Dass and the prisoner Jhoomka, as Shamlall, whether he should affix his seal, but that he did not very distinctly see the prisoners, and therefore could not identify them in this court.

“The real decreeholder, Shamlall¹ Sao, deposed that in the month of Jeyt, Jykishen vakeel had written to him that in the execution of decree cases a forged *mookhtarnama*, purporting to have been executed by him (witness), had been filed in the principal sudder ameen’s court, and that the prisoner Hirdehlall Dass had produced a *farquttee*, or acquittance, on which he (witness) came to Mozufferpore, and going to the principal sudder ameen’s court saw the *mookhtarnama*, and at once discovered that it was a forgery, he (witness) being able to write; that he had no previous acquaintance with the prisoners before the case came into the foudaree court.

“The two vakeels, Jykishen Lall and Meer Shumshere Alee, both retained by the decreeholder Shamlall Sao, deposed, that on the day of sale they heard from Tufuzzul Hossein, vakeel, that a *mookhtarnama* bearing the *cazee*’s seal had been executed, to be filed in the execution of decree cases for the purpose of giving in a *razeenama*, and that a *vakalutnama* was being executed in the name of Lalla Sheonauth Singh, and accordingly these two witnesses and others of the vakeels, suspecting that something was wrong, dissuaded Sheonauth Singh from filing the *mookhtarnama*, which he accordingly did not do. On this the prisoner Uchul Singh Dass filed the *mookhtarnama* in court with a petition. One of these witnesses, Jykishen Lall, stated that the ground of his suspecting the *mookhtarnama* to be a forgery was that on the very day of sale he (Jykishen Lall) had received a letter from his client, desiring him to send him intimation whether the sale took place or the money had been paid in. The other witness, Shumshere Alee vakeel, also deposed to his suspecting the *mookhtarnama* to be forged, on the same ground as that given by the other vakeel, and also that in the several regular suits, the decrees of which were under execution, the prisoner Hirdehlall Dass had put in a fabricated *farquttee*, which was rejected.

“Sheonauth Singh, vakeel, deposed, that he at first accepted the *vakalutnama* on the strength of the *mookhtarnama* given to Uchul Singh Dass, but that on the advice of Jykishen Lall, Meer Shumshere Alee, and other pleaders, he afterwards declined it.

"Tufuzzul Hossein, vakeel, stated, that he heard by rumour at the courts that in these execution of decrees cases a *mookhtarnama* had been executed in the name of the prisoner Uchul Singh Dass, and he (witness) also saw three or four persons running to and fro on the part of the debtor, and the prisoner Uchul Singh Dass also told him (witness) that the decreeholder had been paid his money and that a *razeenama* was about to be filed. On this he (witness) told this circumstance to the decreeholder's vakeels, Jykishen Lall and Meer Shumshere Alee, adding that he (witness) had his suspicions about the genuineness of the *razeenama*, and he (witness) also dissuaded Lalla Sheonauth Singh from giving in the *mookhtarnama*.

"All the prisoners pleaded '*not guilty*,' both before the magistrate and in this court.

"The defence of the prisoner Hirdehlall Dass was, that he knew nothing about the *mookhtarnama*, and pleading an *alibi*, stated that on the 24th of Bysakh 1258 F. S., (corresponding with the 9th May 1851,) he set off on a pilgrimage to Gyah; that he reached Patna on the 1st Jeyt, where he remained till the 17th, having business both at the collectorate, in the civil court, and before the commissioner of revenue, and that he went daily to the cutcherries; that on the 15th Jeyt (being 30th of May 1851, or day of the occurrence before the *cazee*) he was witness to a *vakalutnama* filed by Gokool Tewarry, pauper, in the judge's court in a case *versus* Ajoodheapershaud Tewarry, and accordingly his (prisoner's) name and that of one Ahsan Alee were inserted as witnesses on the *vakalutnama*; that on the 17th Jeyt he (prisoner) set off for Gyah, where he remained three months and returned to Patna in Aghun; that while at the latter place on the first occasion he had lodged in a house which he rented of one Rajranee Koonwur, who sued him summarily for sixteen days' rent, which case detained him another month at Patna; that afterwards, on receiving intimation of his being summoned, he presented himself before the first principal sudder ameen at this station. He cited the above *vakalutnama*, the summary decision for rent, and four depositions, two in the summary case, and two in a suit before the sudder ameen, in which he (prisoner) was sued by one Mun Jha and others for value of cattle, besides several papers to show the existence of enmity between the original decreeholder and Khilput Sao and him (prisoner) and also a *sirkhut* or agreement for rent to Rajranee Koonwur.

"The prisoner Jhoomka urged in his defence that he was employed as a servant by Hirdehlall Dass, who took him with him to Durbungah, together with Buckkun Dass and Suntoe Lall and three or four others, whose names he (prisoner) did not

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know; that Hirdehlall Dass and the other two persons last named used to go daily to the dwelling of one Runjeet Kant; that one day, on returning thence, Hirdehlall Dass said to him, (prisoner,) 'the party who is to settle about my brother Gopaul's marriage is come, but Gopaul is not here; do you come with me, and I will say that you are Gopaul;' that he, (prisoner,) refused, but Hirdehlall Dass would not let him off. On which the latter said to him, (prisoner,) that 'if you won't on that account, of course you will go as a servant.' After which Hirdehlall Dass, Buckkun Dass, and Santee Lall, took him to the *cazee*, where he remained with them some little time, after which Hirdehlall Dass told him (prisoner) and Santee Lall to go home; that there was a blank paper lying near Hirdehlall Dass on which something was being written. He had no witnesses to call.

"The prisoner Uchul Singh Dass pleaded in his defence that on the 15th Jeyt, Runjeet Kant sent for him from his home to go, to Durbungah, where he accordingly went on the 16th, and on the latter date Runjeet Kant sent him into Mozufferpore to file a reply in a suit; that on the evening of the latter date he met Hirdehlall Dass, Buckkun Dass, Santee Lall, and prisoner Jhoomka (representing Shamlall Sao) near the Rajbarree, when the former told him (prisoner) that the execution of decree cases had been adjusted, and that a general *mookhtarnama* in his (prisoner's) name had been attested by the *cazee* for the purpose of filing a *razenama*, to which he (prisoner) replied that the original decreeholder was Khilput Sao, &c., whom he (prisoner) knew, but who was this? To which Hirdehlall replied that this is the brother-in-law of the grand-son of Ramlall Sao, and who has bought the decrees, and the prisoner Jhoomka said that his name was Shamlall; that the next morning he set off for Mozufferpore, after having received the *mookhtarnama* from Shamlall. The next day, which was the day of sale, he arrived at Mozufferpore, and appointed Sheonauth Singh, vakeel, to give in a *razenama*, which the latter was about to do, when Jykishen Lall and Meer Shumshere Alee, vakeels, dissuaded him, on which he (prisoner) himself gave in his petition with his *mookhtarnama*; that he (prisoner) did not know until the prisoner Jhoomka arrived here that such was his real name, and not Shamlall. He called sixteen witnesses, thirteen to speak to his previous good character, twelve of whom were examined, and nine deposing to the prisoner's good character, three stated that they knew nothing about him. He also called four witnesses (three of whom attended and were examined to substantiate his defence of having been at Runjeet Kant's in Jeyt,) but these latter entirely failed to establish the intended *alibi*, deposing only to

the prisoner's having been there in Jeyt, but without any specification of any particular date, or from what date to what date, or what part of the month.

"The three assessors agree in their separately recorded opinions in convicting the prisoner Hirdehlall Dass and the prisoner Jhoomka on the 1st and 3rd counts charged against them, respectively; and the prisoner Uchul Singh Dass on the 1st count only, with which he is charged. In regard to the prisoner Hirdehlall Dass's *alibi*, which he has attempted to establish by urging that on the very day of the occurrence he was present in the judge's court at Patna as a witness to a *vakalutnama*, the assessors observe, that whereas the *vakalutnama* purports to have been attested on the 30th May 1851, the stamp vendor's endorsement upon it shows that the paper itself was not sold till the 13th November following, rendering it therefore impossible that the *vakalutnama* could have been executed on a date five and a half months anterior to that of the paper itself being purchased.

"Respecting the summary decision for house-rent on a *sirkhut*, or agreement for rent, which the prisoner Hirdehlall Dass has pleaded to prove his *alibi* at Patna, the assessors have recorded their opinion that it was obtained collusively with Musst. Rajranee Koonwur, the alleged householder, and tutored evidence after the lapse of nearly six months, the date of filing the plaint being the 21st November, and after the prisoner had been summoned in this case on the 28th June, and the assessors recorded a similar opinion in respect of the evidence of the two witnesses in the sudder ameen's court, in the case of Mun Jha and others *versus* the prisoner and others, and which, on that ground, they do not consider entitled to credit, or trustworthy.

"In regard, too, to the papers filed by the prisoner to prove the plea of his having been implicated through enmity, the assessors observe, that as those papers only refer to disputes between the prisoner and Khilput Sao, they are insufficient to establish feelings of hostility towards him on the part of a Shamlall Sao, the purchaser of the decree. Besides which those papers relate to periods long prior to that of the present case.

"I fully concur in the convicting verdict of the assessors, as to the particular counts on which the prisoners are respectively found guilty, and in the reasoning by which the opinions of the assessors are supported. It is in evidence that the prisoner Hirdehlall Dass did in these same civil suits, out of which the present case arose, and when Khilput Sao was the decree-holder, attempt to exonerate himself from the liability under the decrees by producing a *farquttee*, or acquittance, which was rejected as not genuine, and to all appearance fabricated, and in

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defending himself against the charges for which he is now arraigned, the same prisoner has been a party to perpetrating an offence of the same kind at Patna. Viewing him, therefore, as a professional forger, I could not consider that less than imprisonment for seven (7) years would suffice, to which he has accordingly been sentenced, lesser periods of imprisonment having been awarded to the other prisoners, proportioned to their respective degrees of guilt.

"Adverting to the fact elicited in this trial of a *vahakutnama* engrossed on a stamp not purchased till the 13th November 1851, bearing date of filing in the court of the judge of Patna on the 30th May preceding, I have deemed it my duty to bring the circumstance prominently to the notice of that authority."

Sentence passed by the lower court.—No. 1, seven (7) years' imprisonment, with labor in irons; No. 2 five (5) years' imprisonment, with labor in irons, and No. 3, three (3) years' imprisonment, without labor or irons.

Remarks by the Nizamut Adawlut.—(Present: Mr. A. J. M. Mills.)—"The prisoners Hirdehlall Dass, and Uchul Singh have appealed. Mr. Waller and Ameer Alea appeared for the former and Ahmud Alea for the latter.

"It is contended for the prisoner Hirdehlall Dass,—*first*, that he had paid the money in satisfaction of the decree passed against himself, and that he was not a debtor in the other cases, nor had any interest in the property advertised for sale, consequently it is very improbable that he would have forged or caused to be forged the *mookhtarnama*.

Secondly,—"That the *alibi* pleaded by the prisoner has been established by credible evidence, both documentary and oral.

Thirdly,—"That the evidence to the prisoner going to the *cazee* and introducing the prisoner Jhoomka as his creditor, and causing the *cazee* to attest the *mookhtarnama* was weak and unsatisfactory.

"As regards the first point, I do not find, that the judge's allegation that the prisoner was one of the debtors in the cases, and that his property was lotted for sale, is supported by the record, but there is ample evidence to show that he was closely connected with the debtors. The prisoner was one of the maliks of Sooderpore, against whom nine actions were brought, and all defended the actions on the ground of a general release said to have been given to them by the plaintiff. The prisoner is a brother of one of the debtors, and is related to the others, and would appear to be the general manager for all his co-sharers.

"Further, a separate action was brought to set aside the release, which, be it noted, was registered and pleaded by the prisoner, and it was on setting this document aside, as false and

fabricated, that decrees were passed against the prisoner and his co-sharers for their respective debts. The motives which actuate men to commit crimes are not always discoverable, but it may fairly be inferred, from the above circumstances, that the prisoner was too intimately connected with all the debtors not to have a motive for perpetrating an offence, which, if it did not benefit himself, would at all events exonerate his relations and kinsmen from the liabilities under the decrees.

"As to the *alibi* pleaded by the prisoner, I fully concur with the sessions judge and the assessors in rejecting it. The *vakalutnama*, which the prisoner is said to have attested on the 30th of May (the date of the execution of the forged *mookhtarnama*) at Patna, was attested only for the satisfaction of the pleader, and not before the judge. The responsibility in regard to the execution of such documents rests entirely with the pleader, and neither the pleader nor any witnesses were cited by the prisoner when committed for trial to prove that he was the person who attested the *vakalutnama* on the said date at Patna. He may have connived with the pleader to put his name down as an attesting witness, or the date on which the filing of the document is attested by the judge's signature may have been falsified, and this latter suspicion is strengthened by the fact of the stamp vendor's endorsement upon the back of the deed, showing that the paper was not sold until five and a half months posterior to the alleged date of the execution of the document.

"Respecting the summary decisions for rent, which the prisoner has pleaded to prove his *alibi*, it is sufficient to observe that they were passed in cases instituted after the forgery had been brought to light, and when the prisoner was a fugitive from justice. The forgery was committed on the 30th of May 1851, the document was uttered on the 22nd of June, and the prisoner surrendered himself on the 20th of January 1852.

"As regards the third plea, there is no doubt whatever that the *mookhtarnama* was false and fabricated, and I see no reason to distrust the evidence of the witnesses to the fact of the prisoner having caused it to be fabricated, and on false representations to be attested by the *cazee*.

"The *cazee* (who is stated by the principal sudder ameen to be a most respectable person) and his *mohurir* both swear to the identity of the prisoner, with whom, be it observed, they had previous acquaintance, and to his stating that the prisoner Jhoomka was his creditor, Shamlall Sao.

"Their testimony is supported by that of their three servants, who were sent for and examined by the judge, by the admissions of the other prisoners, and by the fact of the prisoner Jhoomka being a servant of the prisoner Hirdehlall Dass, and of his

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being pointed out by the prisoner Uchul Singh, and being apprehended in the house of the prisoner, Hirdehlall Dass' agent.

" Much stress has been laid by Ameer Aleo upon the circumstance of the *casee* not having written on the face of the *mookhtarnama* that he identified Jhoomka and the witnesses, parties unknown to him, through the recognition of Hirdehlall; but he recorded that the executor of the deed had come in person and acknowledged the deed to be his act, and he may have thought, and with reason in my opinion, that he needed to do no more.

" The pleader for Uchul Singh has urged that there is no proof on the record that the prisoner filed the *mookhtarnama* with the knowledge that it was forged. His conduct throughout the whole transaction appears to me to be clearly indicative of guilt. The circumstance of his having told a false story to the principal sudder ameen, with the view to convince him that the deed was a genuine one, on the day he presented the *mookhtarnama*; his recklessness in uttering the *mookhtarnama* though he had never seen Shamlall Sao before, even after it was pronounced by the pleaders to be a forgery; his contradictory statements in respect to his acquaintance with Jhoomka; and his desire to keep back the name of Hirdehlall; these are facts which afford presumptive proof that he knew the deed to be forged.

" I concur with the sessions judge and the assessors in convicting the prisoners of the crimes established against them, as specified in Column 10 of the Statement, and reject the appeal."

PRESENT:

J. R. COLVIN, Esq., Judge.

UJOODHEARAM CHOWDRY AND RAM CHOWDRY

versus

NUBYE BAOREE (No. 34, APPELLANT), GOPAL ROY, CHOWKEEDAR (No. 35) AND MODHOO BAOREE (No. 36, APPELLANT).

CRIME CHARGED.—Nos. 34 to 36, 1st count, committing a dacoity in the houses of the prosecutors on the night of 28th March 1852, corresponding with the 16th of Cheyt 1258, B. S., and plundering therefrom property valued at rupees 8-12-0, from the house of Ujoodharam Chowdry, and from the house of Ram Chowdry property valued at rupees 8-6-0; and 2nd count, setting fire to the chopper on the outer wall of Ujoodharam's house.

CRIME ESTABLISHED.—Nos. 34 to 36, committing a dacoity in the houses of the prosecutors, and plundering therefrom property valued at rupees 8-12-0, from the house of Ujoodharam Chowdry, and from the house of Ram Chowdry property valued at rupees 8-6-0.

Committing officer, Mr. W. J. Longmore, officiating joint magistrate of Bancourah.

Tried before Mr. P. Taylor, sessions judge of West Burdwan, on the 15th September 1852.

Remarks by the sessions judge.—“The prosecutors in this case, who were cousins, lived in the same outer *enceinte*, but their huts were separated by a party wall perforated by an opening in which there was no door. The dacoits forced the door of the outer enclosure and attacked Ujoodharam in the first instance, and then some of them went through the opening in the party wall, for the purpose of robbing Ram Chowdry. His huts or rooms were two in number; one, which had a door opening to the south, was immediately entered and a couple of silver armlets and two cloths were carried off therefrom.

“Ram Chowdry and Nirunjun (or Niroo) Makoor, the Chowkeedar of the village (witness No. 16), who had been aroused by the noise and of whom the latter had a drawn sword in his hand, were in the other hut, or room, and, on being summoned refused to admit the robbers.

“Fracture of the door with a *koolaree* was then resorted to, and one of the dacoits (prisoner No. 36), attempted to enter the hut, when he received three wounds from the sword of the chowkeedar and retreated. On his discomfiture, prisoners Nos.

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Conviction of dacoity, and sentence upon two prisoners of imprisonment, in banishment, for fourteen years, with labor and irons, upheld by the Nizamut Adawlut.

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34 and 35 entered, simultaneously, but were both driven back, the former with five and the latter with one sword wound.

"Upon this the dacoits decamped, by the way they came, taking their bleeding comrades with them and got clear off. There were four *ghatwals* in the village, but they did not come up until the dacoits were going or gone, nor did they pursue them, because, when they commenced doing so, they found, that the thatch on the wall of the *enceinte* of the prosecutors' house was on fire, and were, they affirmed, obliged to return and put it out. After this had been done and the state of the place examined, notice was sent to the *sirdar* of the Machaparoolia Ghat, Ramchander Roy (witness No. 2), who came over at half past twelve o'clock and made inquiry.

"The next day notice was sent to the thanna Seetla (six *cosse* off) through the chowkeedar Niroo Makoor (witness No. 16), but as no official arrived thence on the morrow, a second message was transmitted, through a *ghatwal* named Adhyt, which resulted in the arrival of Enayutoollah, acting *mohurir*, on the morning of the 19th Cheyt. This officer, who was assisted by Baboo Khan Burkundauz, (witness No. 1), accompanied by Ramchunder Roy, *ghatwal*, (witness No. 2), and others, followed up the blood to a place in the vicinity of a village called Gourya, in the jurisdiction of the Chatna thanna, about three *cosse* from the houses of the prosecutors. Neither of the latter joined in the pursuit. It appeared that Ujoodhearam was absent at Chatua, when the *mohurir* arrived and that Ram Chowdry was to lazy to go. The *mohurir* knowing that the prisoners Nos. 34 and 35 were *budmaskes*, accustomed to reside in the above village, and suspecting that they might be the wounded dacoits, went at once to the house of the former and found him, with a fresh wound on his fingers, which he attributed to an accidental blow from a *pokhora*, or bill-hook, thrown down upon his hand by a child. Inquiry was next made for Nubye (No. 34,) upon which Heeroo, the father of the prisoner No. 35, told the *mohurir*, that he would find him if his son were released. It did not clearly appear what answer was given to the offer, but its result was the discovery of the prisoner in the jungle, by witness No. 1, as per information obtained from the aforesaid Heeroo. His capture took place at a late hour in the afternoon of the 20th Cheyt, and as he immediately acknowledged having gone to rob the prosecutors, his written confession was forthwith taken. In this all the committed prisoners were named, as well as twelve other persons, whose houses were subsequently searched without result, and against whom no evidence was procurable.

"The next day (21st of Cheyt) Thackoordass Ghosaul (prisoner No. 39), a respectable man in easy circumstances was, it

appears, sent for by the *mohurir*, after which his house was searched and the deposition of the prosecutor Ujoodhearam taken, but which procedure was first in order of time, did not distinctly appear. In the house were found a *lotah* and *kutora* of brass, which the prosecutor Ujoodhearam declared were his. After this, on the 26th Cheyt, a second deposition was taken from Ujoodhearam, prosecutor, and the prisoners Hurri Roy (No. 37) and Modhoo Baoree (No. 36) were apprehended; the latter who was caught in the jungle, had fresh wounds on his person and confessed, naming only Nubye Baoree and Nuffur Surma.

"Prisoners Nos. 34 and 36 repeated their confessions before the officiating joint magistrate. That of the former did not differ from his Mofussil one, but that of the latter omitted mention of Nuffur Surma, by name, and pointed out prisoner No. 35, as one of his accomplices.

"All the prisoners pleaded '*not guilty*' before the sessions court, but the answer of Nubye (No. 34) was a confession.

"The *sooruthal*, the apprehension of the prisoners, the confessions of those who confessed, and the finding of the *lotah* and *kutora*, in the house of Thakoordoss Ghosaul (prisoner No. 39) were duly proven by the witnesses named under the appropriate heads in the calendar.

"Witnesses Nos. 5, 16 and 19 also deposed, that the said brass vessels were the property of the prosecutor, Ujoodhearam Chowdry. The repeated confessions of prisoners Nos. 34 and 36, Nubye and Modhoo Baorees; the evidence of the prosecutor Ram Chowdry, and Niroo Makoor, Chowkeedar (No. 16); the state of their wounds at the time of their apprehension; and the deposition of the civil assistant surgeon, left no doubt of their guilt, and I therefore convicted them, on full legal proof, and sentenced them as noted.

"Though the prisoner Gopal Roy, Chowkeedar, was accidentally omitted in the Mofussil confession of prisoner No. 36 (Modhoo Baoree,) he was mentioned in that of Nubye, and subsequently in the foudaree confession of No. 36, and his defence, in which he affirmed that his name had been mentioned by the other prisoners through enmity, and that his hand had been cut accidentally by a *pukhora* or bill-hook, thrown down upon it by a child of three years' old, was not supported by the evidence for the defence and was disproven by the civil assistant surgeon's deposition. It was moreover shown by the prosecution, that his father Heeroo attempted to get him off by betraying Nubye, and that his wound was fresh when he was taken. Under such circumstances, I convicted him also on full legal proof, and sentenced him as noted.

"The only proof against Hurree Sawunt (prisoner No. 37) was the confession of Nubye; no property was found in hi

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house, and the evidence of his witnesses (Nos. 30 and 31), though not very steady, affirmed that he was sick with cholera on the night on which the dacoity occurred. Such being the case, I considered the crime charged not proven against him, and ordered his release.

"I also released Nuffer Surma and Thackoordass Ghosaul, (prisoners Nos. 38 and 39) as I considered them innocent of the crime charged, for the following reasons:—

"It was proven by the evidence of the prosecutors and many of their witnesses, and also by a *ghatwalee* case pending before the officiating joint magistrate, which was sent for and read through by the court, that the first prisoner, abovenamed, had a subsistent dispute with Kisto Roy, *ghatwal*, brother of Ramchunder Roy, sirdar, (witness No. 2) regarding possession of certain *tabedaree* lands, on which the houses of the two prosecutors stand; that the latter were accustomed to eat and drink in company with the said Ramchunder Roy, and were on the most intimate terms with him and his brother Kisto Roy; that the prisoner, Nuffer had an evident right to the said lands, which was sure to appear, as soon as the officiating joint magistrate took up the case, and that it was therefore the object of the sirdar and his brother to prevent his prosecuting his claim, by getting him incarcerated for as long a period as was practicable. The evidence for the prosecution, moreover, showed, that there was strong reason to believe that the name of Nuffer Surma had been suggested to the confessing prisoners, or smuggled into their confessions* by the sirdar and prosecutors, and that every statement of the witnesses tending to implicate him in the dacoity, had been suborned and invented. His defence was a statement of the above circumstances, and a declaration that he was in the house of Suttoo Chowdry, a short distance from the scene of the dacoity, on the night on which it occurred, which allegation was fully borne out by the depositions of his witnesses.

"In the case of Thackoordass Ghosaul, (prisoner No. 39,) the evidence of the prosecutors and their witnesses proved, that a relation of the prisoner, named Ram Ghosaul, who was also related to the prosecutors and connected with Ramchunder Roy, sirdar, (witness No. 2,) and Kashee Mookoottee, the talookdar of Gourya, who were present in that village when the Mofussil investigation took place, were the prisoner's old enemies, in consequence of his having defeated and humiliated them in certain civil cases, in which both had been concerned, and that there was strong reason to believe, both that the deposition of Ujoodhea-

* The thanna mohurir being ignorant of Bengalee, the confessions were written by a Brahmin boy of Gourya.

ram, prosecutor, had been put off with a view to the more leisurely concoction of a conspiracy against the said prisoner (and Nuffer), and that his name had been suggested to the prisoner Nubye (No. 34) when his confession was being taken, or foisted into the same. The prisoner declared, in his defence, that Nubye had had a violent quarrel with him just before the dacoity, and that he was in Rampore, a *mohullah* of Bancoorah, some two or three *coss* from the village of the prosecutors, on the night of the dacoity. His statements were sufficiently borne out by those of his witnesses and the *lotah* and *kutorah* found in his house were proven to be his property.

"It appeared to me that a little more care and attention on the part of the officiating joint magistrate, would have rendered the commitment of prisoners Nos. 37, 38 and 39, unnecessary; but as he had lately been warned to investigate more closely in future (see court's letter, No. 1193, of the 26th August 1852), I did not think it necessary to call upon him for an explanation, but I ordered the *ghatwalee* case to be sent back to him, with a recommendation that it should be read through and decided as soon as possible.

"The acting *mohurir* of thanma Seetla, Enayutoollah, behaved ill in this case, as he attempted to glorify himself at the expense of fact, by alleging that he went to apprehend Nubye in the jungle himself, and pretending that he made much more search for the dacoits, than he actually did. He was moreover open to suspicion of corruption, in allowing the names of prisoners Nos. 38 and 39, to be suggested to the confessing prisoners or introduced into their confessions. The *chowkeedar* Niroo Makoor (witness No. 16) showed cowardice, in shutting himself up in Ram Chowdry's house, instead of arousing the *ghatwals* and causing the apprehension of the dacoits, and the conduct of the *ghatwals* was most cowardly and inefficient. There was no proof whatever that the arson charged in the second count was committed by the dacoits, and it is very possible that the *ghatwals* themselves (one of whom was Kisto Roy, the brother of Ramehunder Roy, sirdar, witness No. 2,) caused it, either as an aggravation of the case against Nuffur Surma and Thakoordass, or as an excuse for avoiding pursuit of the actual dacoits, for it was remarkable that the burnt spot was round the corner, to the right of the front door of the *baree*, on the side from which the *ghatwals* came.

"All these circumstances were communicated to the officiating joint magistrate, by a separate proceeding, with a view to his making such use of them as he might think proper."

Sentence passed by the lower court.—The prisoners Nos. 34 and 36, to be imprisoned for twelve (12) years' each, with labor in irons, in banishment, and two (2) years' more in lieu of

1852.

December 22.

Case of
Nubye Bao-
ren and
others.

1852.

December 22.

Case of
NUBYE BAO-
RIE and
others.

stripes, total, fourteen (14) years' each, with labor in irons, in banishment, and the prisoner (No. 35, to twelve (12) years' imprisonment, with labor in irons, in banishment, and two (2) years' in lieu of stripes and also with labor in irons, and two (2) years' more in consequence of his being a chowkeedar, total, sixteen (16) years', with labor in irons, in banishment.

Remarks by the Nizamut Adawlut.—(Present: Mr. J. R. Colvin).—"The prisoners Nos. 34 and 36, have now appealed; but on the most frivolous and unsupported pleas. They both distinctly confessed before the officiating joint magistrate. There is no ground for interfering with the conviction and sentence in respect to either of them."

PRESENT:

J. DUNBAR, Esq., Judge.

JADOO KOOMAR

versus

SOHUN MULLICK (No. 2) AND BUDUN MULLICK
(No. 3).

1852.

December 22.

Case of
SOHUN MUL-
LICK and ano-
ther.

The prison-
ers who were
charged with
burglary and
theft, and
found guilty
by the zillah
law officer, ac-
quitted, on the
ground of the
illegality of
the prelimina-
ry proceed-
ings.

CRIME CHARGED.—1st count, burglary in the house of the prosecutor on the night of the 21st August 1852, and stealing therefrom property valued at rupees 2-8-0; and 2nd count, knowingly receiving and having in their possession property acquired in the said burglary.

Committing Officer, Mr. W. J. Longmore, officiating joint magistrate of West Burdwan.

Tried before Mr. E. Bentall, additional sessions judge of West Burdwan, on the 30th November 1852.

Remarks by the additional sessions judge.—"On the night of the 21st of August, a burglary took place in the house of Jadoo Koomar, in the village of Gattara, in the thanna of Rughoonauthpore, and property worth rupees 2-8-0 was carried off. Jadoo knew nothing of the circumstance until the next morning; but the case was committed to the sessions because the prisoner No. 2, Sohun Mullick, appeared to have been before convicted of burglary, but in Chota Nagpore, which is an extra-Regulation Province.

"It is said that on the 23rd of August the chowkeedar told the *ghatwal* of the burglary, and he appointed a man who is his deputy to investigate the case; and as this man heard that there were traces of the thief to the village of Chandeia, he went there and assumed a power greater than that which the law gives to a darogah, and apprehended Sohun, because he had before been in jail. Sohun accused Budun, and they were both taken to

Gattara, where the prosecutor and the deputy *ghatwal* both promised them that they should not be prosecuted if they gave up the property, and accordingly they went into the jungle about half way between the two villages, which are a mile apart, and produced some spades and old cloth which were recognized by the prosecutor. The deputy *ghatwal* then sent a written notice to the thanna, which is two or two and a half *coss* off, and the darogah proceeded to the spot on the 25th of August, and one of his people wrote a petition for the prosecutor, and the darogah then proceeded to investigate the case by taking the written confessions of the prisoners, that they were engaged in committing the burglary; but they withdrew them when they were taken before the assistant magistrate.

"There is no doubt but that all the proceedings which took place before the petition was given to the darogah, were illegal, and it was illegal for the darogah to go to the spot to investigate the case. But the prisoners confessed before the darogah, who had then become qualified to receive the confessions; and it is to be considered whether a confession before the darogah, made under a promise of pardon from the prosecutor and the officer who had previously apprehended the prisoners, and assumed the authority of investigating the case, can be trusted. My opinion is, that if the production of the property cannot be taken into consideration, and the mind is divested of the circumstance, the confession cannot be trusted, and the prisoners must be released."

Remarks by the Nizamut Adawlut.—(Present: Mr. J. Dunbar).—"The preliminary proceedings were quite against law and such as to vitiate the whole case. The *ghatwal* and his deputy may have meant well enough, but they should be enjoined to be careful to fall into no such errors again. The attention of the darogah should also be called to the provisions of Section II. Regulation II. of 1832. On the confessions made upon promise of personal safety I place no reliance whatever, nor do I feel at all assured, that the prisoners knew anything about the property found in the jungle. I acquit the prisoners and direct their immediate discharge."

1852.

December 22.

Case of
SOHUN MUL-
LICK and ano-
ther.

PRESENT :

SIR R. BARLOW, BART., *Judge.*TOOTA KOORMI, JEWLOL DHOBBE AND
GOVERNMENT

• versus

BUKKUS (No. 1), ZORAWUR (No. 2), BHUTTUN
(No. 3) AND BUDHŪ (No. 4).

1852.

December 22.

Case of
BUKKUS and
others.

The prisoners were convicted of highway-robbery by the Nizamut Adawlut, concurring with the law officer of the zillah court, in dissent from the sessions judge.

CRIME CHARGED.—Highway-robbery of property valued at rupees 1-6-9, attended with severe beating of Toota and Jewlol, prosecutors.

Committing Officer, Mr. W. T. Tucker, joint magistrate of Patna.

Tried before Mr. R. J. Loughnan, sessions judge of Patna, on the 22nd November 1852.

Remarks by the sessions judge.—“The reason of this reference is a difference of opinion between the law officer of this court and myself, he thinking the charge proved against the prisoners, while I am not satisfied with the evidence against them, and would acquit them accordingly. I have therefore directed the prisoners to be enlarged on bail pending the final orders of the court.

“The prosecutors Toota and Jewlol accuse the prisoners of attacking them, in concert with about four other men, on the highway, beating them severely with *lattees* and *lohbundas*, and robbing them, Toota of a bunch of plantains and a *gumcha*, or handkerchief, Jewlol of a *dhôtee*, *doputta* and scull cap. They say the attack was made on them at one or one and a half *ghurree* of the night, and the night was a dark night. If they consider the night to begin with sun-set, which I believe not to be the case, it would have been dark or nearly so in one and a half *ghurree*, or near an hour and a quarter after. If night begins with the disappearance of twilight, of course it must have been quite dark. I therefore feel much difficulty in believing that there was enough light to enable them to recognize those of the perpetrators whom they knew, and they and the witnesses only speak of there being light enough when cross-questioned as to how they recognized so many persons after night-fall on a dark night.

“The prosecutor Toota named, besides all the prisoners, two others, not arrested or not put on their trial; but it appears from a communication of the *amlak* of the zemindar of the place, who arrested two of the prisoners, and two others, without waiting for the interference of the police, that he had not named more than two of the prisoners to them, and when the darogah arrived on the spot he declared he recognized four others who were in

custody, whom he had not named to the zemindar's *amlah*; among those were the other two prisoners.

"There are many improbabilities in the statements of the witnesses. It is unlikely that eight or ten men would have set upon two travellers, who had nothing of any value to tempt them, in a place where two witnesses were watering their fields, and three others were passing by. The prosecutors, prisoners, and witnesses, are for the most part inhabitants of the same neighbourhood; and there is something not devoid of suspicion in the prompt arrest of several of the accused persons by the zemindar's people, who kept them moreover in custody nearly two days before the darogah was informed of the occurrence, viz., from the early part of the 14th October, till late at night of the 15th. The darogah, moreover, though he arrived at the village on the 16th, did not send his prisoners to the officiating magistrate till the 20th, an irregularity which does not seem to have been noticed by the late officiating magistrate, Mr. Tucker, who committed the case.

"The arrest of the prisoners by the villagers, or zemindar's people, was not legal, for they were not arrested immediately by the persons who saw them in the act; and there is no legal evidence to show on what ground, and by whom, they were arrested.

"The prosecutors certainly appear to have been beaten severely, for they had still the marks of blows on them at the trial; but I cannot resist the conclusion which the defence of some of the prisoners suggests, that there was some quarrel, in the course of which the injuries were inflicted.

"The late officiating magistrate will be called on to explain his passing over the darogah's conduct in detaining the prisoners at the thanna beyond the legal time."

Remarks by the Nizamut Adawlut.—(Present: Sir R. Barlow, Bart.)—"There is no sufficient ground in my opinion for discrediting the evidence of the eye-witnesses generally; one indeed of the prosecutors in the sessions court varied considerably in his statements, as compared with what he said before the magistrate, but upon the whole, the evidence is trustworthy; and the law officer of the sessions court has convicted the prisoners of highway-robbery. The attempt they have made to defend themselves is altogether a failure. I convict the prisoners of highway-robbery attended with severe beating. The amount of property carried off was small, but the assault was after dark and on the high road. The prisoners are sentenced to four (4) years' imprisonment, with irons and labor."

1852.

December 22.

Case of
Bukkus and
others.

PRESENT :

A. J. M. MILLS, Esq., *Officiating Judge.*

MOHESH CHAKUR AND GOVERNMENT

versus

ZUMEER MUNDUL (No. 1), SEKUNDUR MUNDUL (No. 2), YAR MUNDUL (No. 3), PEYAR MUNDUL (No. 4), BULLAH POTOOA (No. 5) AND TUKEE MUNDUL (No. 6).

1852.

CRIME CHARGED.—Dacoity in the house of Mohesh Chakur (prosecutor,) in which property to the value of rupees 831-2-0 was plundered.

December 22.

Case of ZUMEER MUNDUL and others.

CRIME ESTABLISHED.—Dacoity in the house of prosecutor, Mohesh Chakur, in which property to the value of rupees 831-2-0 was plundered.

Committing Officer, Mr. G. H. Ricketts, officiating magistrate of Nuddea.

The prisoners were acquitted on appeal, the Nizamut Adawlut discrediting the evidence for the prosecution, its very uniformity making it appear to have been tutored.

Tried before Mr. J. C. Brown, sessions judge of Nuddea, on the 2nd October 1852.

Remarks by the sessions judge.—“The crime charged has been proved by the evidence of the witnesses for the prosecution. The prisoners all deny having been engaged in the dacoity, and state they had gone to Moolla *haut* to complain to a farmer named Issan Chunder Roy; that they went off the day on which the dacoity was said to have been committed, were absent the next, and returned home on the third day. This the evidence of Issan Chunder did not corroborate.

“He stated that he had left Moolla *haut* for his own house, and that he met the prisoners and others about six miles distant from that place; that they had some conversation, and he promised to see about the business they had come upon, when he returned. That he then proceeded on his way and they on theirs; but he cannot say if they went to Moolla *haut* or not. He cannot remember the day of the week, nor the date of the month, but he says that he reached his home the day after he had met the prisoners; and that on the night of the day he reached home, he heard a great noise, which he was informed on the following morning was the dacoity in the prosecutor's house. Neither the prisoners, nor their witnesses, have alluded to these points, but have said they went to Moolla *haut*, and there had an interview with the above witness, who is their land-holder. It was well known in that neighbourhood that three persons had been living in the prosecutor's house for about a month, who had come there to buy bent bamboos for marriage palkees, and the whole of the money they had (about rupees 700) was carried

off. The charge being in my opinion proved, and the defence, only an *alibi*, not being substantiated, I convict the prisoners."

Sentence passed by the lower court.—Each, five (5) years' imprisonment, and two (2) years in lieu of corporal punishment, total, seven (7) years' imprisonment, with labor in irons.

Remarks by the Nizamut Adawlut.—(Present : Mr. A. J. M. Mill).—"The prisoners have appealed. They pleaded on the trial, and in their petition of appeal have reiterated the allegation, that enmity has long existed between their superior landlord and the superior landlord of the prosecutor and his witnesses, and and that this false accusation has resulted therefrom. The judge has not questioned the witnesses of the prosecution with the requisite degree of closeness on this point, but the evidence to the defence supports the plea, and a perusal of the record has conveyed to my mind the impression that the prisoners are not the perpetrators of the outrage with which they stand charged. The uniformity which the depositions bear to each other, as well as the exact correspondence of those taken in the sessions court with those taken in foudaree, is so remarkable, as to excite great doubts and suspicions as to the credibility of the testimony. The witnesses speak not only to the recognition of the prisoners, who are near neighbours, but to the weapons which each carried, with a consistency which is opposed to all probability; they are persons under the influence of the zemindar of the prosecutor, and their testimony is unsupported by any corroborative proof whatever. It is not shown that the prisoners are persons of bad character, or that any attempt was made by the witnesses, two of whom are chowkedars of the village, to follow them to their houses and apprehend them that night, or even to ascertain whether they were absent. I cannot give credence to the truth of the evidence on the point of identity, and acquit the prisoners, and direct their release."

1852.

December 22.

Case of
ZUMER MUN-
DUL and
others.

PRESENT :

R. H. MYTTON, Esq., *Officiating Judge.*

GOVERNMENT

*versus*NUSURDEE (No. 3, APPELLANT), NUNDRAM (No. 4)
AND KALEEDASS (No. 5).

1852.

December 23.

Case of
NUSURDEE,
(appellant,) and others.Riotous as-
semblage for
the purpose
of committing
a breach of
the peace.Sentence,
one year's
imprisonment,
confirmed.If a prisoner
does not wish
his witnesses
to be examin-
ed, it is unne-
cessary to do
so.

CRIME CHARGED.—1st count, arson, on 19th November 1851, corresponding with 4th Aghun, 1258 B. S.; and 2nd count, riotously and illegally assembling for the purpose of committing a breach of the peace.

CRIME ESTABLISHED.—Riotously and illegally assembling for the purpose of committing a breach of the peace.

Committing Officer, Mr. A. G. Macdonald, magistrate of Rungpore.

Tried before Mr. T. Wyatt, sessions judge of Rungpore, on the 8th June 1852.

Remarks by the sessions judge.—“ From the statement of the prosecutor on the part of Government, and the evidence adduced, it was proved that a quarrel having previously existed between two zemindars, *viz.*, Chytun Chunder Roy and Rummoney Mohun Chowdry, regarding some *chur* land, on the morning of Wednesday, the 19th November 1851, prisoner No. 3 (and others not yet apprehended), on the part of Rummoney Mohun, and prisoners Nos. 4 and 5 (and others absconded), on the part of Chytun Chunder, riotously assembled at the place where the dispute arose, for the purpose of cutting the crops of the *chur*, though no direct evidence was adduced as to one or other of these prisoners having set fire to the houses of certain *ryots* of each of these zemindars.

“ In his defence, prisoner No. 3, denying the charges, alleged that he had merely gone to the spot where the dispute arose to cut his crops, when, on being opposed by the party of Chytun Chunder, zemindar, he, on remonstrating, was beaten, when he fled.

“ Prisoners Nos. 4 and 5, stated, that they were *ryots* of Chytun Chunder, pleading that they had been maliciously implicated by Rummoney Mohun, zemindar; that they were not present at the riotous assemblage in question, but were standing at a little distance off.

“ Their witnesses support them in their pleas, but which are not credited against the preponderating evidence of the eye-witnesses on the part of the prosecution.

“ The *futwa* found the prisoners guilty of the 2nd count, punishable by *tazeer*; in which I concurred.”

Sentence passed by the lower court.—Each one (1) year's imprisonment, without labor or irons.

Remarks by the Nizamut Adawlut.—(Present: Mr. R. H. Mytton).—"The prisoner Nusrudee (No. 3) has now appealed, urging that he did nothing but remonstrate with the opposite party on their coming to cut his paddy. This was his defence in the sessions court, but he then stated that he had no witness to support it, nevertheless the sessions judge took the evidence of some witnesses whom he had cited in the foudaræ court. This was unnecessary. The riotous assemblage in which the prisoner is alleged to have been concerned was at the village of Sonacoory, not at Dondabary, where he states that he remonstrated with the other party, so that his guilt is not inconsistent with the forcible cutting by the other party of his paddy, and his remonstrance and flight from thence.

"There is no reason for interfering with the sentence."

PRESENT:

R. H. MYTTON, Esq., *Officiating Judge.*

GOVERNMENT

versus

MOOLYA DOOLYA.

CRIME CHARGED.—Dacoity in the house of Sreenauth Bhut-tacharge on the night of the 15th June 1259, B. S., in which property valued at Company's rupees 545-4-0 was plundered.

CRIME ESTABLISHED.—Being an accomplice in dacoity.

Committing Officer, Mr. E. Jackson, joint magistrate of Baraset.

Tried before Mr. W. J. H. Money, sessions judge of 24-Per-gunnahs, on the 20th September 1852.

Remarks by the sessions judge.—"The Government was prosecutor in this case: the prisoner denied the charge, on which he was arraigned in this court; before the joint magistrate and the darogah he confessed his being an accomplice in the dacoity. It appeared from the evidence of Sreenauth Bhuttacharge (witness No. 7 in the calendar), that on the night of the 3rd Assar, after midnight, he was disturbed by an attempt of persons to break into his house with lighted torches. In his alarm he escaped from his own upper story to the roof of a neighbour's house, and after the dacoits had gone, he returned to his own house and found his *pitarqs* and boxes broken open and property plundered to the extent of rupees 546, consisting of gold and silver ornaments and clothes. Some of his neighbours came to his house and information was given to the police. The fact of

1852.

December 23.

Case of
NUSRUDEE,
(appellant,) and others.

1852.

December 23.

Case of
MOOLYA
DOOLYA.

Dacoity,
sentence of
seven years' imprisonment,
confirmed.

1852.

December 23.

Case of
MOOLYA
DOOLYA.

the dacoity, and the marks of violence in the house of Sreenauth Bhuttacharge, were deposed to by his neighbours, some of whom went to the house that night after the dacoits had dispersed. The datogah knew the prisoner to be a bad character, and having heard of his absence from his village had him apprehended through the instrumentality of witness No. 12, Boikunt Doolye, and witness No. 13, Titoo Meer Burkundauz. It was ascertained from the evidence of witness No. 14, Gossain Doss Bagdee, that previous to the dacoity the prisoner had been seen by him (witness) amongst a number of persons assembled in the house of one Gova Ram Dome, and the prisoner subsequently admitted to the witness his having committed a dacoity in the village where Sreenauth Bhuttacharge resides.

"The prisoner cited witnesses to prove his good character, but nothing was elicited in his favor. I convicted him of being an accomplice in dacoity and sentenced him accordingly."

Sentence passed by the lower court.—Seven (7) years' imprisonment, with labor and irons."

Remarks by the Nizamut Adawlut.—(Present: Mr. R. H. Mytton.)—"The confessions of the prisoner are full, circumstantial and distinct to the fact of his being an accomplice in the dacoity. There is no reason to interfere with the sentence."

PRESENT :

W. B. JACKSON, Esq., *Judge*.

NITYA NIKARINEE AND GOVERNMENT

versus

OOJUL NIKAREE.

1852.

December 24.

Case of
OOJUL NI-
KAREE.

CRIME CHARGED.—Theft of ornaments attended with attempt to commit murder and personal injury, endangering life.

Committing Officer, Mr. C. F. Montresor, magistrate of Nuddeah.

Tried before Mr. J. C. Brown, sessions judge of Nuddeah, on the 3rd December 1852.

Attempt at murder with theft of ornaments from a child. Sentence, transportation for life.

Remarks, by the sessions judge.—"The *fatwa* of the law officer of this court declares the prisoner convicted on his own confessions, proved by evidence to have been voluntarily made before the Mofussil police and the magistrate, of the crime of feloniously robbing from the person of the prosecutrix's son Menjan (a child about five or six years old), certain ornaments (which have been recovered and produced in court), and of throwing the child into a hole or pit containing water, with the intent and desire of depriving him of life by drowning, which confessions he has admitted and repeated before this court, as far as the robbery

and disposal of the ornaments to Lokenauth Potedar, from whom they were recovered, and declares him liable to discretionary punishment by *akooabut*.

"The magistrate has not alluded to the value of the ornaments which were taken by the prisoner, in any of his proceedings or the calendar, but from the *chelan* of the property when sent in by the police, and from the statement of the prosecutrix in this court, the value appears to be from five to six rupees, not more.

"The proved confessions of the prisoner, and the circumstantial evidence recorded on the trial, the production of the ornaments by the persons to whom he said he had sold them, and, in conclusion, his making no defence, but for the third time confessing the robbery laid to his charge, and refusing to examine the witnesses called on his behalf, admit of no doubt of his guilt, and the atrocity of the crime of which he has been justly convicted demands the severest punishment short of a capital sentence. That the prisoner intended to take the child's life when he threw it into the water, there is not a shadow of doubt about, so his intent to commit murder is clear, and had not the life of the child been providentially saved, the prisoner's life must have been forfeited.

"Under the above circumstances, I can only suggest a sentence of imprisonment, with hard labor in irons, in transportation for life beyond seas, being passed upon the prisoner."

Remarks by the Nizamut Adawlut — (Present: Mr. W. B. Jackson.)—"The evidence against the prisoner Oojul consists of his own confession, and the fact that the child's ornaments were found where he said he had placed them, also that the child was found in the water where the prisoner threw him, after attempting to strangle him, and taking away by force the ornaments abovementioned from his body: the child's body was much marked by the injuries he received, and his escape has been a most narrow one. I convict the prisoner Oojul of robbing the child Meajan, aged six years, of his ornaments, and of attempting to murder him to prevent discovery of the crime. I sentence the prisoner Oojul to transportation for life, with hard labor and irons."

1852.

December 24.

Case of
Oojul Ni-
karee. •

PRESENT :

J. DUNBAR, Esq., *Judge*.

GOPAUL DEY TELEE

*versus*BULIE DOME, CHOWKEEDAR (No. 15, APPELLANT) AND
HARADHUN BAOREE (No. 17).

1852.

December 24.

Case of
BULIE DOME,
CHOWKEE-
DAR, (appel-
lant,) and
another.

On appeal
of one pri-
soner in a case
of dacoity, the
conviction and
sentence pass-
ed upon both
were affirmed.

CRIME CHARGED.—1st count, dacoity in the house of the prosecutor, and plundering therefrom property valued at rupees 45-12-0 on the night of the 31st May 1852; No. 15 being village watchman at the time he committed the said crime.

CRIME ESTABLISHED.—Dacoity. No. 15 holding the office of police chowkeedar at the time he committed the said crime.

Committing Officer, Mr. W. J. Longmore, officiating joint magistrate of West Burdwan.

Tried before Mr. E. Bantall, additional sessions judge of West Burdwan, on the 11th October 1852.

Remarks by the additional sessions judge,—"On the night of the 31st of May, a dacoity took place at the house of Gopaul Dey, in the village of Boirakulea, in the thanna of Seetlah, and about rupees 45 worth of property is said to have been carried off. Bulie Roy, the chowkeedar, assembled the villagers, and states that he shot arrows at the dacoits, and as they were going off he attacked them, and one Nuffer having been wounded was secured and afterwards died of his wounds; his house was about 3-8ths of a *cross* from Boirakulea. The chowkeedar then went after Bulie Dome (prisoner No. 15), another dacoit, and knocked him down and he was then secured. He was the chowkeedar of the village of Dodeumka, about one *cross* off from Boirakulea, and he confessed his crime at the time, and again in the morning before the darogah; but he denied it before the magistrate, and pleaded '*not guilty*' before me. His defence was that he heard the noise of the dacoity and with some of his villagers went to help in opposing the dacoits, but the distance is so great that it is not probable (witness No. 13 says the distance is one and half *cross*), and not one of his witnesses corroborates his statement. The prisoner Haradhun Baoree (No. 17) was apprehended according to the evidence on the day after the dacoity, but according to the record on the 2nd of June, owing to the confession of Bulie on the previous day. He confessed before the police on the 2nd of June at night and again before the deputy magistrate on the 4th June, that he was one of the dacoits; besides which he had an arrow wound in his thigh. He is convicted on his confession, which is supported by the circumstances of his having received a wound. The magistrate has

been directed to call the attention of the darogah to Regulation XX. of 1817, Section XIX. Clause 3. The conduct of the chowkeedar has been brought to the notice of the joint magistrate with a recommendation that he should be rewarded."

Sentence passed by the lower court.—No. 15, fourteen (14) years' imprisonment, with labor and irons in banishment, and No. 17, ten (10) years' imprisonment, with labor and irons, in banishment.

Remarks by the Nizamut Adawlut.—(Present: Mr. J. Dunbar).—"One only (No. 15) of these prisoners has appealed. The evidence is clear against both, and the court see no reason to interfere. The conduct of the village chowkeedar was most gallant; he well deserves a reward."

PRESENT:

A. J. M. MILLS, Esq., *Officiating Judge.*

MOOKEE TAMOOLIN

versus

MUDHOOSOODUN KURMOKAR.

CRIME CHARGED.—Burglariously entering the house of the prosecutrix on the night of the 29th July 1851, corresponding with 14th Sawun 1258 B. S., and with malice aforethought, repeatedly wounding the prosecutrix with a dagger (*boojalee*) with intent to murder her.

CRIME ESTABLISHED.—Burglariously entering the house of the prosecutrix, and with malice aforethought repeatedly wounding her with a dagger (*boojalee*) with intent to murder her.

Committing Officer, Mr. W. J. Longmore, officiating joint magistrate of West Burdwan.

Tried before Mr. P. Taylor, sessions judge of West Burdwan, on the 20th September 1852.

Remarks by the sessions judge.—"This case was originally committed by Mr. G. A. Pepper, joint magistrate of Munglepore division, but in so slovenly and incorrect a manner, that I was obliged to cancel his commitment, on the 7th April 1852. It is very possible that as Mr. Pepper was an inexperienced officer, this untoward delay was purposely caused by Jaggunauth Chatterjee, *mohurir* of the Munglepore court (sent for and examined by me) who drew up the *kushra*, or foul copy of the calendar, for the purpose of giving the prisoner more time, wherein to make arrangements for his safety. Mr. Pepper was so little in the habit of consulting rules, that he probably signed whatever was laid before him in the shape of a form, and the

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Case of
BULIE DOME,
CHOWKEE-
DAR, (appell-
lant,) and
another.

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Case of
MUDHOOSOOD-
DUN KURMO-
KAR.

The prison-
er's plea of
alibi rejected,
and evidence
of absent wit-
nesses duly
proved, admit-
ted against
him.

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Case of
MUDHOOSOOD-
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faulty nature of the calendar in question shows that he must have done so in the instance under remark.

"The evidence fully established the following facts, *viz.*, that the prosecutrix, who had been seduced by the prisoner about three years ago, had insisted upon his giving up the connexion, two or three months before the crime was committed; that her refusal to change her resolution was its cause; that at about eight or nine o'clock, on the night of the date in the Statement, the prosecutrix went into the bazar, with the witness Pearee Baureenee (sent for and examined by me) to buy some *choora* and *goor*, leaving the witnesses Dhooke Hariu (absconded) and Premee Baureenec (deceased) in her shop, to await her arrival; that the prisoner, in the meantime, effected an entrance into the principal apartment of the prosecutrix, by breaking a hole large enough to admit a man in the back part thereof; that he waited for her with a naked *boojalee*, or Nepaul knife, in his hand; that when the prosecutrix returned and entered the aforesaid room, for the purpose of getting some water, the prisoner attacked her with the said lethal weapon, and gave her four successive wounds on the forearm, inside the hut, and three on the head, as she was endeavouring to escape; that he dropped the scabbard of the *boojalee* in his confusion, and fled; and that he remained absent or lay *perdu*, for three or four months afterwards, when he was met with and captured by Baueshur Chatterjee (witness No. 2.)

"The size and weight of the weapon were shown by the length and form of the scabbard, which was recognized, as having been the prisoner's property, and the evidence of the native doctor, witness No. 5, showed distinctly that death must have been the object of the blows inflicted on the prosecutrix.

"Great efforts had been made by the friends of the prisoner to get rid of, or to vitiate, the evidence brought against him, and the prosecutrix had filed *razeenamas* in the foudjaree court. Witness No. 1, Dhooke Hariu, had evidently been hidden away after the case had gone through Mr. Pepper's hands, and I therefore thought myself perfectly justified in admitting the evidence which she had given at the thanna, and before that officer against the prisoner. The like evidence of Premee Baureenec was also admitted, in consequence of her decease. Pearee Baureenec was not sent to the sessions court as a witness, because the officiating joint magistrate had put her on trial for perjury, but subsequently released her, in consequence of his not being able to discover what ministerial officer had caused her to make solemn declaration. I however sent for and took her evidence. As that of the witness No. 6, Nobeenu Doss Chowkeedar, was very unsteady, and I was obliged to make over witness

No. 7, Kali Singh, chowkeedar, to the officiating joint magistrate

1852.

- 1 Radha Dae Lohareenee.
- 2 Jewa Baureenee.
- 3 Kanchaune Bagdeenee.
- 4 Thakoordass Kur.

to be tried for perjury, I thought it necessary to send for the four other possible eye-witnesses, named in the margin, who were examined accordingly.

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Case of
MUDHOOSOD-
DUN KURMO-
KAR.

“ Every effort was made to find witness No. 1, but without success. Her Mofussil deposition entirely supported the statement of the prosecutrix and so did her foudaree one, but there were three supplementary pages of questions and answers attached to the latter, which though bearing Mr. Pepper's signature, were not marked nor signed by the witness, nor headed with the usual note of solemn declaration having been made by her, and which contained three answers which she could hardly have given, as they were opposed to what she had previously said and to the evidence of the other witnesses. I see no reason to believe that these three pages had been added to the record, and Mr. Pepper's signature thereof surreptitiously obtained, by the above-named *mohurir*, Juggernaut Chatterjee, and that their existence explained the case with which Dhooke had been kept out of the way since they were written. The Mofussil and foudaree depositions of the deceased Preme Baureenee both supported the statement of the prosecutrix.

“ Pearee's Mofussil deposition was also coincident with the same, and her foudaree one, as first taken by Mr. Pepper, was not discordant therewith, but Mr. officiating joint magistrate Russell, again examined her, after my cancellation of Mr. Pepper's commitment, for what reason does not appear, when she repudiated everything she had said before. Her deposition before the sessions court was a complete and exact recurrence to her original statement. The deposition of witness No. 6, (Nobin Chowkeedar) was unsteady, because he had evidently been tampered with, but cross-examination established that the statement made by him at the thanna, which agreed with that of the prosecutrix, was that to which credence must be accorded. Witness No. 7, Kali Singh, chowkeedar, whose thanna deposition had agreed with that of the prosecutrix, deliberately perjured himself before the sessions court. The Mofussil and foudaree depositions of Dhooke and Preme, and the Mofussil deposition of Pearee, were all sufficiently authenticated by the parties who took them, or superintended their being taken, and the *sooruthal*, &c., were duly sworn to. The evidence of the residual witnesses for the prosecution did not require any remark.

“ The defence of the prisoner was an *alibi* on the night of the occurrence, but his witnesses failed to support it. Evidence as to general good character was also adduced, but that is of no significance in a case of this kind.

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"The *fulwa* of the new law officer, Moulvee Abdoor Ruman, which was a very well-drawn and well-considered document, found the prisoner guilty of the crime charged *bu zun-i-ghalib*, or violent presumption, and declared him liable to *akooobut* at the discretion of the judge.

"I agreed in the finding as far as the guilt of the prisoner was concerned, but considered the evidence to amount to full legal proof, and therefore, as the crime was of a very cruel and unmanly character, sentenced the prisoner to the full extent of my authority, as noted.

"I at the same time ordered that the nature of the suspicions attaching to the conduct of the *mohúrir*, Juggurnauth Chatterjee, should be made known to the officiating joint magistrate."

Sentence passed by the lower court.—Fourteen (14) years' imprisonment, with labor in irons.

Remarks by the Nizamut Adawlut.—(Present: Mr. A. J. M. Mills.)—"The appeal is mainly on the grounds of the *alibi* and the evidence of the absent witness Dhooke, and the deceased witness Premee having been improperly admitted. The depositions in question have, I remark, been attested in the manner prescribed by paragraphs 6 and 7 of the Circular Order, No. 54, dated 16th of July 1830, and the sessions judge was, under the circumstances stated by him, justified in admitting them as evidence against the prisoner. I agree with the sessions judge in discrediting the *alibi* set up by the prisoner. The case has been very carefully tried by the sessions judge. There evidently appears to have been a bold attempt on the part of the prosecutrix, and the prisoner's relatives, to screen the prisoner from punishment, and the proof is not so full and not conclusive against him as it otherwise would have been; but there is no reason for disbelieving the evidence of the prosecutrix: it is supported by the testimony of the two witnesses abovementioned (I reject that of Pearee, as she has perjured herself,) and is corroborated by the sudden and mysterious flight of the prisoner from the village, and generally by the circumstances of the case. The intrigue between the prosecutrix and the prisoner, which the former wished to break off, was no doubt the motive to the crime, which was committed in a very deliberate manner. I confirm the conviction and sentence passed by the sessions judge, and reject the appeal."

PRESENT:

R. H. MYTTON, Esq., *Officiating Judge.*

GOVERNMENT AND RAM RUTTUN ROY

versus

NEPAUL DOME (No. 1), BHOBUN MOHUN PATTRO (No. 2), KISSEN KOORMEE KHOTTAH (No. 3), MUDDUN POORYE (No. 4), NUDDYAR CHAND BAGDEE (No. 5), DENEE DASS SINGH (No. 6), PUTIT GHOSE (No. 7), MOOKTARAM DOME (No. 8), SISTEE-DHUR DOME (No. 9) AND DWARKANATH DOME (No. 10).

CRIME CHARGED.—1st count, Nos. 1 to 10, dacoity in the house of the prosecutor, Ram Ruttun Roy, and plunder of property to the amount of rupees 480-14-0; 2nd count, accomplices in the said dacoity; 3rd count, No. 3, accessory to the above crime before its perpetration; and 4th count, No. 1, receiving a portion of the above property knowing it to have been plundered.

CRIME ESTABLISHED.—Accomplices in dacoity.

Committing Officer, Mr. E. A. Samuells, magistrate of 24-Pergunnahs.

Tried before Mr. W. J. H. Money, sessions judge of 24-Pergunnahs, on the 24th September 1852.

Remarks by the sessions judge.—“The prosecutor deposed that on a Friday night, the 6th Assar last, at midnight, he and his family were disturbed by a sound of voices on the roof of his upper-storied house, when the door of the stairs leading to the roof was broken in, and about eight dacoits descended to his room, one of them striking him with a stick, which made him insensible for a time. His boxes and *pituras* were then broken open and property plundered, consisting of gold and silver ornaments, to the value of about rupees 480. The dacoits, altogether about twenty in number, being armed with *lattees*, axes and swords, and intimidating the prosecutor, who managed to escape with his daughter to a neighbour's house. It appeared that a wall surrounded the prosecutor's house, to the west of which was a bamboo clump, which enabled them to scale the wall. Inside the compound, and close to the house, was a *bel* tree, up which some of the dacoits climbed and mounted the roof, some of them as described entering the house from above, and the others from below. The prisoners denied the charges on which they were arraigned in this court. In the Mofussil they all admitted the dacoity, prisoner No. 1 making a very full confession and describing the manner in which the prosecutor's

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Case of NEPAUL DOME and others.

Dacoity. Sentence of fourteen years', and ten years' imprisonment, confirmed.

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house was scaled, admitting having taken some of the plundered property to Hurrochunder Shaha (witness No. 28), Neelmony Dutto Poddar (witness No. 29) and to his woman (witness No. 30) Khettro Raur, and acknowledging that he had been three times apprehended on a charge of dacoity. Before the magistrate prisoner No. 2, Bhoobun Mohun Pattro Dome, and prisoner No. 4, Muddun Poorye, admitted the dacoity, and prisoner No. 3, Kissen Koormee, acknowledging his being an accessory before the fact. All the others denied the charges. The prosecutor could not recognize any of the party who attacked and plundered his house, but a clue was discovered from information received from witness No. 27, a *goinda* called Hurry Mohun Dass, who had ascertained that the dacoity had been committed by Nepaul Dome and his gang, which information led to their apprehension. This witness, who appears to be acquainted with Nepaul (No. 1), Bhoobun Pattro Dome (No. 2), Nuddyar Chand Bagdee (No. 5) and Sisteedhur Dome (No. 8), declares them to be all bad characters; Nepaul being a sirdar dacoit. Witness No. 1, Khussora *alias* Pear Sheikh (admitted as an approver) deposed to the fact of the dacoity in the prosecutor's house as described in the Mofussil confessions of all the prisoners, whom he identified as being concerned in the dacoity. Witness No. 3 and witness No. 4, Jankee Shawonth and Gobind Bearer, corroborated the prosecutor's statement as to the fact of the dacoity and the marks of violence they observed on going to his premises, and deposed also to the bruises visible on the prosecutor's head and shoulder. Witness No. 28, Huro Chunder Shaha, and witness No. 29, Nilmony Duttuo Poddar, deposed to the sale to them of the plundered property by prisoner No. 1, Nepaul Dome. Witness No. 30, Kettro Raur, deposed to the prisoner No. 1, Nepaul Dome, giving her the articles Nos. 1 and 2, silver ornaments. Witness No. 31, Madhub Shaha, deposed to the witness No. 1 having placed some property with him. Witnesses also deposed to the discovery of property No. 1 and No. 2 in prisoner No. 1, Nepaul's, house, and others recognized the articles as belonging to the females of the prosecutor's family. Prisoner No. 1, Nepaul Dome, prisoner No. 2, Bhoobun Mohun Dome, prisoner No. 4, Muddun Poorye, prisoner No. 7, Putit Ghose Gowala, and prisoner No. 9, Sisteedhur, cited witnesses to prove good character. Prisoner No. 3, Kissen Koormee Khottah, declared he came to see a brother who was sick when he was apprehended and beaten. Prisoner No. 5, Nuddyar Chand Bagdee, prisoner No. 6, Dennee Singh, prisoner No. 8, Mooktaram Dome, and prisoner No. 10, Dwarkanauth Dome, cited witnesses to prove an *alibi*; prisoner No. 6 also to certify to his good character. Nothing however was elicited in their favor. I convicted them all of being accomplices in dacoity, awarding a severer punish-

ment to Nepaul Dome, prisoner No. 1, as being a notorious dacoit."

Sentences passed by the lower court.—No. 1, fourteen (14) years' imprisonment, in banishment, and Nos. 2 to 10, each, ten (10) years' imprisonment, all with labor and irons.

Remarks by the Nizamut Adawlut.—(Present: Mr. R. H. Mytton).—"The prisoners in this case have been convicted on full and convincing proof. They have appealed on the most futile grounds. Their appeal is rejected."

PRESENT:

W. B. JACKSON, Esq., Judge.

GOVERNMENT AND JUGUNNAUTH SHAH

versus

MOONGA, ALIAS MUNGLA, SHEIKH (No. 14, APPELLANT), KISTO MONEE BOISTOMY (No. 18, APPELLANT), KANGALEE PARAMANICK (No. 7), MADAREE SHEIKH (No. 9), ANUND SHEIKH (No. 10), ATTA-OOLLAH PARAMANICK (No. 11), KISTO MOHUN PARAMANICK (No. 13), SUDDOO SHEIKH (No. 15), KERAM SIRDAR (No. 16) AND GAZEE SIRDAR (No. 17).

CRIME CHARGED.—Nos. 7, 9, 10, 11, 13, 14, 15, 16 and 17, 1st count, dacoity, in the house of Jugunnauth Shah, prosecutor, and plundering therefrom property valued at rupees 424-7-0; and 2nd count, receiving portion of the above-mentioned property knowing at the time that such property had been obtained by dacoity; and No. 18, 1st count, being an accessory after the fact to the aforesaid dacoity; and 2nd count, knowingly receiving property plundered in the said dacoity.

CRIME ESTABLISHED.—Nos. 7, 9, 10, 11, 14, 15, 16 and 17, being accomplices in dacoity, and Nos. 13 and 18, knowingly receiving property plundered in dacoity.

Committing Officer, Mr. L. F. Beaufort, officiating joint magistrate of Pubna.

Tried before Mr. G. C. Cheap, sessions judge of Rajshahye, on the 7th September 1852.

Remarks by the sessions judge.—"The entry into the prosecutor's father's house was effected secretly; but on the father, who was blind, feeling a man's hand on his face, calling out to his son, and raising a hue and cry, the gang, who were outside, rushed in, and with violence commenced plundering the premises. On No. 7 being apprehended with a piece of cloth on him (of which he could give no good account) he was taken to the

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Case of
NEPAUL DOME
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Case of
MOONGA, alias
MUNGLA
SHEIKH, (ap-
pellant), and
others.

Conviction
and sentence
affirmed, ex-
cept as re-
garded im-
position of irons
on a female.

1852. thanna, and there confessed that he was concerned in the dacoity
 December 24. implicating others. The discovery of the cloth on No. 7, and of
 a part of the property plundered in the houses or premises of
 Case of the prisoners Nos. 9, 10, 11, 14, 15, 16 and 17 being clearly
 MOONGA, *alias*, proved, as well as their confessions before the officiating joint
 MUNGLA magistrate to have been voluntarily made, I have convicted
 SHRIKH, (ap- them of being accomplices in the dacoity, and No. 13, who
 pellant), and admitted that he received the articles marked Nos. 31 to 35
 others. from the prisoner No. 8 (who has been acquitted for want of
 proof), and No. 18 (the concubine of No. 8) having also
 pointed out property marked Nos. 26 and 27, which she pledged
 to one woman, and a gold *nuth*, marked No. 36, which she sold
 to another, I have convicted these two prisoners on the second
 count, and sentenced them all, as stated in the preceding column.

“The case was tried under Act XXIV. of 1843, and the Court’s Circular Order of the 5th July 1844. The police deserve commendation for the successful issue of the trial, ending in the conviction of nine of the gang, and the female, who was evidently their *fence*, employed to dispose of the plunder.”

Sentence passed by the lower court.—Nos. 7, 9, 10, 11, 14, 15, 16 and 17, to five (5) years’ imprisonment, with labor and irons, and Nos. 13 and 18, to three (3) years’ imprisonment, with labor in irons.

Remarks by the Nizamut Adawlut.—(Present: Mr. W. B. Jackson.)—“I see no reason to interfere with the sentence passed on the prisoners Moonga, *alias* Mun gla, and Kisto Monee Boistomy, except as regards the imposition of irons upon the latter, which is contrary to Circular Order, No. 31, dated 11th October 1839.”

PRESENT:

SIR R. BARLOW, BART., *Judge.*

ROH. MYTTON, ESQ., *Officiating Judge.*

GOVERNMENT AND BHOYRUB BAGDEE

versus

PANCHKOWREE BAGDEE HALSANAH.

CRIME CHARGED.—Wilful murder of Brijomonee, Bagdin, wife of Bhoyrub Bagdee, prosecutor.

1852.

Committing Officer, Mr. R. Abercrombie, officiating magistrate of Beerbhoom.

December 24.

Tried before Mr. R. B. Garrett, officiating sessions judge of Beerbhoom, on the 23rd November 1852.

Case of
PANCHKOW-
REE BAGDEE
HALSANAH.

Remarks by the officiating sessions judge.—“From the evidence in this case, it appears that the deceased, Brijomonee Bagdin, mother of the prosecutor, on the 7th Kartick last, corresponding with 22nd October 1852, about an hour before sunset, was sitting down before her house, when the prisoner rushed up, and seizing her by the hair of her head, dragged her into her house, and there threw her down, and, planting his foot on her throat, he with his hands broke her neck and killed her on the spot; these particulars are established by two eye-witnesses, viz., Kishoree Bagdin, the deceased's daughter-in-law, and her son, Khylos Bagdee. The deceased's husband, Bhoyrub Bagdee, happened to be out at the moment, but returned home in time to hear the first witness call out ‘murder,’ and to see the prisoner in his house, who, directly he caught sight of him, ran away;—on entering his house he found his wife quite dead. Neemae Bagdee (witness No. 12) saw the prisoner proceeding towards and into the prosecutor's house angrily muttering abuse. In this court this witness deposed to having seen the prisoner going in the direction of the prosecutor's house; before the magistrate he stated that he saw him enter it; on being called upon to account for the discrepancy, he acknowledged that what he had stated before the magistrate was quite correct, and that he had forgotten the circumstance until reminded of it. Lukheekant Bagdee (witness No. 13) saw the prisoner making his escape from the prosecutor's house, and states that he was in company with the prosecutor immediately after when Khylos came and informed him of the murder; that he returned with the prosecutor and saw the corpse; he added that in consequence of the noise and music attendant upon the preparation for the procession which was going on close by, any outcry that may have been made in prosecutor's house would not have been audible.

Murder by
the prisoner
twisting the
neck of a wo-
man while he
held her down
by pressing
her neck with
his foot. Sen-
tence, death.

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PANCHKOW-
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" It is proved by the evidence of the witnesses who sat on the inquest, and by that of the civil assistant surgeon, that the deceased met with her death from injuries on her neck and adjacent parts; their testimony is in every respect corroborative of the evidence given by the two eye-witnesses.

" The motive assigned for this act of violence is as follows: The deceased's younger son, Puresh Bagdee, had been married to Bandee Bagdin, the prisoner's niece; Puresh died about a year or eighteen months ago, and the family seem to have been dissatisfied with the conduct of the widow, the deceased especially is said to have frequently chided her for her unsteadiness; it is supposed that she complained to her uncle of this treatment, and hence his resentment.

" The prisoner pleads '*not guilty*;' in his defence he states that his niece, Bandee Bagdin, the widow of the deceased's son, wished to have a share of the family property, and it was imagined that she did so at his instigation, which brought down upon him the ill-will of all the members of the family. He called nine witnesses to prove that at the time the murder is said to have taken place, he was present with the procession which on that day issued from the house of Nuffer Ghose (who is a neighbour of the prosecutor's).

" Of these nine witnesses two, *viz.*, Muddy Gope and Ramlall Chowkeedar, swear very positively that they saw the prisoner amongst the crowd of spectators and amongst the dancers in the procession, and that they did not lose sight of him for the three last hours of the day; a third, Bheekoo Bagdee, deposes to the same effect, but on cross-examination, he admits that he went away for about one *ghurree* of the time to smoke. Bandee Bagdin, the niece and alleged origin of this tragedy, states that she had not had an interview with her uncle for a year, and that when she saw him dancing in the procession on the day of the murder, she held no communication with him whatever. She acknowledges that she had disagreed with her deceased husband's family and that they had turned her out of doors. The remainder of the evidence for the defence is not in any respect exculpatory of the prisoner.

" The assessors, Baboos Deen Dyal Banerjee, Vakeel, Khetternauth Sen, mookhtar, with whose assistance I tried this case, find the prisoner guilty of the wilful murder of Brijomonee Bagdin. The evidence for the prosecution is so conclusive, whilst that for the defence is so unsatisfactory, that I cannot hesitate to give my full concurrence to this verdict.

" I can scarcely believe that the prisoner went to the house of the deceased with the premeditated intention of destroying life; it is hardly credible that, whatever might have been the

treatment which his niece met with at the hands of the deceased, it would have exasperated him to such a degree as to lead him intentionally to avenge her cause to the death. A festival was going on close at hand; he had himself joined in the dancing before the image; his mind was probably in a very excited state, and in this frame an exaggerated description of his niece's ill-usage might have inflamed him to a degree beyond control. I do not consider that justice demands that this crime, under the above view of the case, should be visited with the extreme penalty of the law. I would recommend the prisoner to be imprisoned for life, with hard labor in irons, in transportation beyond sea."

1852.

December 24.

Case of
PANCHKOW-
REE BAGDEM
HALSANAH.

Remarks by the Nizamut Adawlut.—(Present: Sir R. Barlow, Bart., and Mr. R. H. Mytton).—MR. R. H. MYTTON.—“The fact of the murder having been perpetrated by the prisoner, and the manner in which he effected it, are satisfactorily established by the evidence of Kishoree and Khylos, who have been consistent in their account from the very first. Khylos immediately gave notice of the occurrence, and the prisoner was secured by the chowkedars at once. There is also circumstantial evidence in corroboration, but some of the witnesses under that head, viz., Bharut and Nunay, have, I think, deposed before the magistrate to more than they actually saw. Their evidence is therefore not of much value. The defence, and the evidence which supports it, are of no weight. It is not probable that in the excitement of the *Doorga Poojah* procession, any one would keep watch on any particular person the whole time.

“The judge suggests that a sentence of death should not be passed; but I regret that I cannot admit that his reason is well-founded. The prisoner showed by what he did that it was not slight corporal punishment that he intended to inflict, but to take life. He cunningly selected a time when it might be expected that most people would be out of the way seeing the procession. The quarrel between deceased and his niece had taken place at noon, and she then left the house, and it may be presumed that if she made any complaint, it was then or soon after. The murder was committed in the evening, so that it is not probable that it was perpetrated immediately, under the irritation caused by her representations.

“I am not of opinion that there are grounds for a mitigated sentence, and would condemn the prisoner to suffer death.”

SIR R. BARLOW, BART.—“The prisoner, a young man of thirty-two, attacked the deceased, an old woman, without any justification—seized her by the hair, dragged her into a house, threw her down, stamped upon her neck, which he violently wrenched, and so maltreated her that she died on the spot.

1852. The medical officer deposes that death was caused by injuries inflicted on the neck and adjacent parts, which were much bruised. The prisoner's niece, Bandee, had been married to the son of the deceased, who upbraided her for her loose conduct; this is said to have been the cause of the assault. I see no circumstances of mitigation in the case, and concur in passing capital sentence on the prisoner."

December 24.

Case of
PANCHKOW-
REE BAGDEE
HALSANAH.

PRESENT :

R. H. MYTTON, Esq., *Officiating Judge.*

DAEEAH GHAZEE

versus

INAYETULLAH.

1852.

CRIME CHARGED.—Wilful murder of Musst. Sharonee, grandmother-in-law of the prosecutor.

December 28.

Case of
INAYETUL-
LAH.

Committing Officer, Mr. E. Sandys, magistrate of Tipperah. Tried before Mr. H. C. Metcalfe, sessions judge of Tipperah, on the 3rd December 1852.

Murder al-
leged to have
been commit-
ted by a mad-
man. Prison-
er acquitted
for want of
proof of the
fact.

Remarks by the sessions judge.—“The reference arises from a difference of opinion between the Mahomedan law officer and myself, relative, I will not, under the circumstances, say to the *guilt* of the prisoner, but to the sufficiency of the evidence to establish that the deceased, Musst. Sharonee, met with her death in consequence of his acts.

“The prosecutor stated that the deceased was his wife's grandmother, and lived in his house. On the 5th of Bysakh, he was aroused from sleep, at about 4 p. m., by his servant Satcowree (witness No. 4), who informed him that the old woman was lying on the river's side wounded and groaning. The witness hastened with his servant to the *ghat* and found his grandmother lying on the ground, with several wounds on the head. The two removed her to the house, and used every available remedy to recover her, summoning at the same time the two chowkeedars of the village, witnesses Nos. 5 and 6. When the deceased was restored to her senses, she explained that a madman, with whom she was totally unacquainted, had inflicted the injuries on her head with a *lattee*, had bitten her little finger, and then taken off the cloth she wore on her person twisted it round his head and run away. The deceased expired that evening, and intimation was given to the darogah who apprehended the prisoner. The witness saw him for the first time when apprehended, and then noticed that he was insane.

"The darogah's report on the subject is, that on the day in question the prisoner was beating the people collected in the bazar, who, in consequence, turned him out, when he ran away in the direction of the river and began to pelt some women with earth and to drive them away. Meeting Juggurnath Gope (witness No. 7), he seized him, pressed him tightly in his arms, spat in his face, and ran off towards Ameerabad, where meeting Kumuruddeen (witness No. 8), who stated in the course of his examination the prisoner was stark naked, he took him up and threw him on the ground.

"On the following day he appears to have pursued the same mad course at mouza Mullooh, where he assaulted and put to flight a large number of people, and seriously injured a calf. The darogah, hearing of Musst. Sharonée's death, and of its being attributable to the acts of a madman, had no difficulty in connecting the prisoner with the event, and accordingly forwarded him to the sudder station.

"On his arrival the civil assistant surgeon declared him to be insane, and he was removed for security and medical treatment to the Dacca Insane Hospital. His mental health being now restored, he was placed on his trial to answer for having wilfully murdered Musst. Sharonée.

"There were no witnesses to the fact, but the circumstantial evidence, and the utter improbability of two madmen playing the same description of insane pranks at the same time, and on or near the same spot, are in my opinion grounds sufficient to justify a conviction.

"The prosecutor's servant, Satcowree, corroborated his master's statement to the letter, and the two chowkeedars who arrived when summoned deposed to the old woman's injured state, and to her explanation that it was caused by an insane person, whom she had never seen before. She was eighty years of age, but healthy for so advanced a stage in life.

"The witnesses Nos. 7 and 8 were the persons who were attacked so strangely by the prisoner in the course of the same day, the one at three miles and the other at two miles distance from the spot where the deceased was found lying wounded and insensible. The witness No. 9 was herself pursued by the prisoner, and the injured calf belonged to the witness No. 12, while the witness No. 13 was one of the women whom the prisoner pelted on the river side on the same day that Musst. Sharonée met with her death. The witness No. 14 deposed, that the prisoner had been insane at intervals for five or six years, and was wont to wander about the bazar of Chandpore and other places. Hearing of the death of the old woman by the hand of a madman, he suspected the prisoner to be the perpetrator of the deed, and apprehended him, and made him

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over to the chowkeedar. This witness, I remark, is stated in the magistrate's court, to have deposed that the prisoner first threatened to strike him, and then having thrown his stick into a tank, jumped in after it, when the witness followed and secured him. Before me he denied having said anything of the kind. The discrepancy is not very material, but is a strange one to occur, as, if the witness really deposed to that effect in the magistrate's court, I cannot see on what grounds he denied having done so in mine. The next witness, No. 15, who was present when the prisoner was seized by the preceding witness, also makes no mention of these additional circumstances attending his apprehension, either in the magistrate's court or in mine.

"The defence was simply a denial of having injured the deceased.

"The *futwa* acquits the prisoner, on the ground of want of proof.

"It is certain that no one saw the prisoner maltreat the deceased, but the presumption that he did so seems to me irresistible. Acts of decided insanity, and resembling much that which the poor old woman was incompetent to defend herself against, are proved against him under circumstances as to scene and time, which really leave no doubt on my mind, that he, and he alone, caused the death of Musst. Sharonee.

"It will be observed that I asked the civil assistant surgeon to favor me with his opinion, whether under the circumstances admitted by the prisoner, namely, that he had been twice out of his mind, on the first occasion for one month, and on the second for two or three months, with an interval between the seizures of one year, such madness not appearing to be hereditary, he was likely again to relapse. The answer was that any sufficiently exciting cause presenting itself, a relapse into insanity was probable; I may add that the expression of his eye is even now that he is to all appearance undoubtedly sane, very wandering and unsatisfactory.

"Under the circumstances I have set forth, I would acquit the prisoner of culpable homicide, not on the ground adopted by the Mahomedan law officer, deficiency of proof that his hands inflicted the injuries of which Musst. Sharonee died, but under Act IV. of 1849, considering it to be satisfactorily proved that, by reason of unsoundness of mind, he was unconscious and incapable of knowing that the act done by him was one forbidden by the law of the land. Should the court sanction this view of the case, I would advise that, under Section III. of the law I have cited, the prisoner should for the present be kept in safe custody in the district jail. Time will prove whether he is in fact liable to a return of attacks of insanity, and until such liability is satisfactorily shown not to exist, I would not recommend his being allowed to go at large."

Remarks by the Nizamut Adawlut.—(Present: Mr. R. H. Mytton).—"The deceased attributed her death to a madman, and there is every probability that she did so correctly. I, however, cannot allow that the proof on the record is sufficient for the conviction of the prisoner of the fact of the murder.

"The mad pranks, which are alleged by the witnesses to have been performed by him, are not shown to have occurred under such circumstances as to scene and time (to use the sessions judge's words,) as to raise a legal presumption of the deed having been committed by the prisoner.

"The following is an abstract of the evidence in the sessions, on which the judge relies in the summing up in his 9th para.

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No. of Witness.	What occurred to him, or what he witnessed.	Day on which it occurred.	Time of Day.	Distance and direction from place of occurrence.
7	Was seized and squeezed by prisoner, ..	5th Bysakh, ..	1 Puhur remaining of the day, ..	3 Miles North.
8	Was seized and thrown by prisoner, ..	One day early in Bysakh ..	Evening, ..	2 Miles South.
12	Prisoner struck his calf,	6th Bysakh, Saturday, ..	2½ Puhurs, ..	½ Miles North.
13	Was pelted by prisoner,	5th, Friday, ..	2½ Puhurs, ..	2 Miles North.

"From the evidence of Nos. 7 and 13, it appears that on the day of the occurrence, *i. e.*, 5th Bysakh, the prisoner acted like a madman, but at places three and two miles off that where the murder took place, and (supposing that the discovery of the deceased's misfortune occurred soon after it,) at a time of the day irreconcilable with the prisoner being the murderer. No. 8 does not, as stated by the sessions judge, say that he was attacked on the day in question, nor does he give any clue by which it might be inferred. On the contrary if both he and the abovenoticed witnesses are to be believed, it could not have been on the same day. The prisoner could not have been two or three miles to the north, and two miles to the south of the same place simultaneously. Witness No. 9 was not examined by the judge, and ought not to have been alluded to in the summing up. The prisoner is acquitted."

PRESENT :

J. DUNBAR, Esq., *Judge.*

SHAKHARA BEWAH AND GOVERNMENT

versus

SOOKMA AURUT.

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Case of
SOOKMA
AURUT.

The prisoner, a woman of low intellect, murdered the child of the prosecutrix, under the delusion that she had lost her own child, through the agency of witchcraft on the part of the latter. As she could not be considered irresponsible on account of insanity, she was sentenced to imprisonment for life in the zillah jail.

CRIME CHARGED.—Wilful murder of the girl Bunsee, daughter of the prosecutrix.

Committing Officer, Mr. C. F. Carnac, officiating magistrate of Moorshedabad.

Tried before Mr. D. I. Money, sessions judge of Moorshedabad, on the 29th October 1852.

Remarks by the sessions judge.—“The prisoner remained silent though repeatedly asked whether she was ‘guilty’ or ‘not guilty’ of the charge.

“The particulars of the case are as follow :

“On the 27th of Sawun last, or 10th August 1852, the prosecutrix went to work in the Sanotal *mât*. About noon she sent home her daughter, named Bunsee, a girl of three years old. In the evening, when she returned home, she could not find the child, and searched for her in vain, and the same night informed the manjees and others of the village. On the following morning, the prosecutrix again made a fruitless search for the missing child, and then informed Boodhoo, chowkeedar of the village, of the circumstances, and desired him to question Sookma, the prisoner, whom she suspected of the murder of her child. The prisoner when asked by the chowkeedar, confessed that she had murdered the child, and taking the prosecutrix, the chowkeedar, and others of the village, to a jungle, pointed out the spot where she had left the body. The prosecutrix discovered it covered with *sal* leaves, and brought it before the police. The darogah carried on the investigation on the spot, and the prisoner confessed the murder and pointed out the place where she said she had committed it. Before the fatal occurrence the prisoner had threatened to murder the child of the prosecutrix, because her own had been killed by witchcraft, which made the prosecutrix suspect the prisoner. The prisoner and the prosecutrix are sisters. The former had a daughter, who died in the month of Assar, and it was out of revenge she murdered the prosecutrix’s child. She was married ten years ago, and had been intimate with the prosecutrix ; but since the death of her own child, she entertained malice towards her.

“In this case there were no witnesses to the fact. The statement of the prosecutrix was confirmed with slight variations by the evidence of Boodhoo Chowkeedar, Dulloo Manjee, Sham

Manjee, and other circumstantial evidence. Boodhoo Chowkeedar and Sham Manjee, added that the prisoner in her confession declared that she had committed the murder by a blow of the brass *kharoo* which she then wore on her hand, and which weighed one and a half seers, and the deceased had a scar as if from a *kharoo* on her forehead.

"The prisoner confessed at the *thanna* that she had murdered Bunsee, because, although her daughter Seeta died of fever, she suspected that the enchantment of Shakhara Bewah, the prosecutrix, who is a *phokoo* (witch), might have caused her death, in consequence of which the prosecutrix has since been quarrelling with her. She therefore, with a view to revenge the murder of the child, murdered Bunsee, the prosecutrix's daughter. She committed the act two *ghurries* before the evening, in a jungle, at a distance of four *russees* from the village, by pressing her neck with both hands, and striking her on the head with the *kharoo* which she had on her right hand. The above confession was fully proved by the attesting witnesses, who stated that it was given voluntarily.

"Doctor Kean, the civil surgeon, stated, that he did not know the cause of death, as the body of the deceased was in too decomposed a state, and according to his statement it would appear that the prisoner was in her right mind, and conscious of its criminality when she committed the act. In the sessions court, however, she seemed during the trial to show some signs of eccentricity, bordering on mental derangement. I requested Doctor Kean after the trial to watch her attentively in jail, and after a longer and more careful consideration of her state to report to me the result. From his report I am induced to believe that the conduct of the prisoner during her trial before me may have been the effect of excitement and fear operating upon a very low intellect. She would answer no question, and would not sit down, and attempted several times, looking restlessly about her, to leave the court. There was no dissimulation in her acts. She did not pretend to be mad. It is very difficult under such circumstances to decide whether, with a consciousness at the time of the criminality of the heinous offence she was committing, such consciousness as an intellect so low, amounting almost to an animal instinct, might feel and exhibit, she was in strict justice rendering herself liable to the extreme penalty of the law. She was not considered insane by her neighbours. It is very probable, if the mind became unhinged, that the death of the child, which she attributed to witchcraft on the part of the prosecutrix, and of whom she was very fond, may have been the cause.

"The assessors who sat on the trial convicted the prisoner of having murdered Bunsee Chokree.

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"There can be no doubt of the prisoner's complicity in the murder, even if she was not the principal; but with the doubt which I entertain in this case of such a degree of sanity, or responsible consciousness, as would render her liable to the full penalty of murder, I should not be justified in recommending a capital punishment; and would therefore recommend that the prisoner be sentenced to imprisonment for life in the zillah jail."

Remarks by the Nizamut Adawlut.—(Present: Mr. J. Dunbar.)—"Although the prisoner stood mute on the trial, and would not answer to the indictment, the evidence to the free and voluntary character of the confession made by her in the Mofussil, first to the villagers, and subsequently to the darogah, is sufficient to establish her guilt. The confession must be taken, however, as a whole, and while it is received as proof that the prisoner murdered the child Bunsee, it should also be admitted as showing that she did so under the delusion that she had lost her own child through the witchcraft of her sister. The evidence of the prosecutrix herself proves, that the prisoner had for some time been under the influence of this delusion, and this is not to be wondered at in one, of whom the medical officer writes that, though not insane, she appears to be miserably low in intellect, and scarcely indeed superior to a mere animal.

"If the sessions judge entertained any doubts about her sanity, he should not have been content with a letter from the medical officer on the subject, he should have required him to give his deposition upon oath. This does not, however, appear to me to be now necessary, as the written opinion of Dr. Kean is quite in accordance with the evidence for the prosecution, which leaves no room to doubt, that up to the time of committing the act, the prisoner was of as sound mind as ever she had been. I believe that she committed the murder under the influence of what may almost be called an insane delusion, with the view of revenging the injury she conceived herself to have sustained at the hands of the prosecutrix. I do not think, however, that the delusion was of such a nature, as to make her incapable of discerning right from wrong; she is therefore amenable to punishment. I convict her of murder, and under all the circumstances of the case, I sentence her, as recommended by the sessions judge, to imprisonment for life in the zillah jail, with labor suitable to her sex."

PRESENT:

J. DUNBAR, Esq., Judge.

R. H. MYTTON, Esq., Officiating Judge.

GOVERNMENT

versus

ANNUND DOME.

CRIME CHARGED.—Wilful murder of Musst. Dinnomoney Domenee.

Committing Officer, Mr. E. Jackson, joint magistrate of Baraset, 24-Pegunnahs.

Tried before Mr. W. J. H. Mopey, sessions judge of 24-Pegunnahs, on the 4th December 1852.

Remarks by the sessions judge.—“The Government was prosecutor in this case.

“The prisoner denied the charge on which he was arraigned.

“Hurrochunder Dome (witness No. 1), elder brother of the prisoner, and husband of the deceased, deposed that in the evening of the month of Assin 1257, (which appears to have been the 15th,) he was at work in the prisoner's premises, at a distance of sixteen *kaths* from the deceased, who was standing between witness No. 2, Musst. Surbo Domenee and witness No. 3, Bhoobun Domenee, talking to them, when the prisoner came from the village armed with a hatchet, and without saying a word attacked the deceased and ran off, throwing down the hatchet, and was not apprehended until this year (namely on the 19th Jeyt 1259, or 31st May 1852.) This witness did not actually see any blow given; but as soon as his wife fell down, and the two witnesses Nos. 2 and 3, Surbo Domenee and Musst. Bhoobun Domenee, cried out, he saw the prisoner escaping. There does not appear from his statement to have been any ill-will between the deceased and the prisoner, who he supposes must have suspected her of misconduct; but this witness admitted that some ten or fifteen days previously the prisoner had spoken angrily to him and the deceased, in connexion with money matters.

“Musst. Surbo Domenee (witness No. 2) deposed to the fact of herself and witness No. 3, Musst. Bhoobun Domenee, talking to the deceased, who was between them, on the evening of the month of Assin (date not remembered), when the prisoner came up with a hatchet and attacked the deceased, striking her twice on the neck; to the deceased falling down and dying almost immediately; and to herself running away. Witness No. 3, Musst. Bhoobun Domenee, deposed to the same purport, except that she did not actually see the blows given by the prisoner.

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Case of
ANNUND
DOME.

Wilful murder from motive unknown.
Sentence, death.

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Case of
ANNUND
DOME.

Witness No. 4, Modhoosoodun Chung, who was at work in his field about two *russees* off, deposed to his hearing Hurrochunder Dome (witness No. 1) call out that the prisoner had wounded his wife. None of these witnesses could assign any reason for this outrageous attack, though the last witness admitted having heard, and indeed suspected, that an intrigue existed between the deceased and the prisoner, and conjectured that there may have been some dispute on the subject. Before the magistrate this witness deposed to his having seen the prisoner strike the deceased.

"The witnesses to the *sooruthal* depose to a wound on the left side of the neck and cheek of the deceased, about six fingers long, four fingers broad, and four fingers deep; the bone and skin cut. On the upper part of the left arm a wound three fingers long, one finger broad, and one finger deep; on the left side of the head over the ear a wound eight fingers long, two and a half fingers broad, and three fingers deep—the bone and muscles of the neck cut through, merely a little of the throat in front remaining; a wound also under the right arm, three fingers long, two and a half fingers broad, and one finger deep; a slight wound also on the left elbow.

"Doctor Mackinnon, surgeon of Artillery at Dum-Dum, who examined the corpse, deposed, that the head was nearly severed from the body, and it must have resulted from several blows by the same weapon, such as the hatchet produced in court, and which weighed about ten *chittacks*, two and a half *cutchas*, the blade being about half a *hath* long. He was of opinion further that from the division of the spinal marrow, and the large vessels of the neck, the death of the deceased must have been instantaneous; that the wound was from the back part of the neck, and from its appearance, and the head being still attached by some integuments and muscular fibre, he was of opinion that the head must have been forcibly held down at the time the deed was committed. The body was declared to be otherwise in a healthy condition.

"The prisoner denied the hatchet produced in court being his property, declared his brother witness No. 1, Hurrochunder Dome, was a fool, and that he was on bad terms with witness No. 2, Musst. Surbo Domenee and witness No. 3, Musst. Bhoobun Domenee; that the deposition of witness No. 4, Modhoosoodun Chung, was contradictory. He pleaded an *alibi*, and cited witnesses to assert his innocence.

"The hatchet produced in court was proved to have been the one thrown down by the prisoner at the time he absconded. The witness No. 1, Hurrochunder Dome, was not a fool, though he gave his evidence in a rambling, strange manner. The pleas of ill-will between the prisoner and witnesses Nos. 2

and 3, Musst. Surbo Domenee and Musst. Bhoobun Domenee, were not even alluded to by the witnesses for the defence. The evidence of witness No. 4, Modhoosoodun Chung, was certainly contradictory on a material point, but it does not appear to have been wilful. Two witnesses for the prisoner denied having seen him previously at the village where the deceased was killed, but the others deposed to his having been there and absconding after the fatal occurrence, which fact has been clearly proved by the evidence for the prosecution, as well as the apprehension of the prisoner after so long a period had elapsed. One witness for the defence alluded to occasional disputes between the prisoner and deceased.

“ Every exertion has been made to ascertain the cause of the violent attack on the deceased, but without success. Whatever may have been its origin, there can be no doubt of the prisoner’s guilt, the law officer considering him deserving of punishment short of death. The evidence is I think most conclusive; and judging from the nature of the wounds, the murder was most savage and deliberate, and seeing no extenuating circumstances in the case, I am compelled to recommend a capital punishment.”

Remarks by the Nizamut Adawlut—(Present: Messrs. J. Dunbar and R. H. Mytton.)—MR. R. H. MYTTON.—“ I concur with the sessions judge in the opinion that the prisoner should be sentenced to suffer death. The offence is fully established; and if there were any palliating circumstances, they would assuredly have been elicited, if not pleaded by the accused himself.”

MR. J. DUNBAR.—“ This is a case in which no plea can be urged in favor of mercy. The murder was one of a most brutal character, and calls for exemplary punishment.”

“ I concur in the sentence proposed.”

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Case of
ANNUND
DOMR.

PRESENT :

SIR R. BARLOW, BART., *Judge.*

BEKUN KOEREE, KHOOBLLOLL DOSADH AND
GOVERNMENT

versus

KHURUG ROY RAJPOOT.

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Case of
KHURUG ROY
RAJPOOT.

The prisoner, a chowkeedar, who cut down the deceased under the erroneous supposition that he was a thief, was acquitted by the Nizamut Adawlut.

CRIME CHARGED.—1st count, culpable homicide of Pokhun Koeree, brother of Bekun Koeree; and 2nd count, wounding Khoobloll Dosadh.

Committing Officer, Mr. A. G. Wilson, deputy magistrate of Behar.

Tried before Mr. T. Sandys, sessions judge of Behar, on the 25th November 1852.

Remarks by the sessions judge.—“During the night of 18th September last, the deceased, brother of the prosecutor Bekun Koeree, and a resident *ryot* of one of the quarters appertaining to the town of Behar, happened to go outside his dwelling, when the prisoner, the chowkeedar of that quarter, supposing him to be a thief, attacked him, and severely wounded him with his sword.

“The deceased lived to give his evidence before the police, the next day, but died *en route* to the station, from the severity of his wounds; any one of which, according to the civil surgeon, ‘if not immediately brought under surgical aid, would inevitably produce death.’

“The deceased’s evidence, as well as that of the witnesses for the prosecution, who turned out on the alarm set up by each other, and according to the prosecutor Khoobloll, on that of thieves, assigns no other origin to the tragic deed. There are only two ostensible eye-witnesses to the fact; one, the prosecutor Khoobloll, and the other, the witness Chintamun (No. 1.) The former deposes that he reached the spot whilst the prisoner was striking the deceased, and on his calling out that the deceased was one of the villagers, the prisoner turned on him, and slightly wounded him also in the hand, of which he showed marks at the thanna. Chintamun (witness No. 1) explained under examination, that he had turned out on Khoobloll’s outcries, but when he reached the spot, Khoobloll was not there. In this case it is incomprehensible how he could have witnessed the wounding of the deceased, as deposed to by him.

“The prisoner sets up a somewhat contradictory defence, that he did and did not wound the deceased, who had attacked him

with a number of other thieves, although before the deputy magistrate he acknowledged him to be a person of good character. He has invariably pleaded that it was a dark night, and challenging the deceased and obtaining no reply, he mistook him for a thief. He called no witnesses before this court, and those he did before the deputy magistrate proved nothing in his favor.

"The *futwa* of the law officer convicts the prisoner in a higher degree than that on which he stands committed. He declares his crime according to the Mahomedan law to be wilful murder. This of itself alone renders the present reference necessary. He argues at some length on the prisoner's culpability in wounding the deceased repeatedly instead of apprehending him, had he mistaken him for a thief, aggravated also by his wounding a second person, the prosecutor Khoobloll, and whether done under the influence of intoxication or otherwise, he discredits his having attacked them as thieves. However, giving the prisoner the benefit of his doubts, he makes *kissas* barred, and declares him liable to punishment for the price of blood by *deeyut*.

"There is nothing on record to support a conviction for wilful murder, even did the arraignment admit of it. The evidence of the prosecution, always excepting Khoobloll, has been given in a straight-forward manner, and in deposing under examination that the prisoner must have recognized the deceased's voice, has shown no disposition to favor or screen his guilt. Yet their testimony at the furthest only amounts to that given by the deceased himself, that the occurrence happened unawares, (in his own words *unchet se*,) the prisoner mistaking him for a thief. It only remains for consideration, whether the homicide was culpable or accidental. By all accounts it was a very dark night. The deceased was a person born deaf, which gives some weight to the prisoner's plea that he challenged the deceased and got no reply. The prisoner had been chowkeedar of the quarter for six months, too short a period in so populous a place, in my opinion, to have enabled him to recognize the deceased by his voice, which at least he must have made some use of during the repeated blows inflicted on him, and according to the prosecutor Bekun Koeree himself, the deceased's brother, the prisoner came to him shortly after the occurrence, and acknowledged his fault. Khoobloll's statements, contradictory in themselves, of the prisoner's having been intoxicated, are utterly unsupported by the other witnesses. He told the deputy magistrate that the prisoner had been smoking *ganja* at Lukput Rae's, but this he denied before this court, saying he only recognized him to have been intoxicated by his talk at the time of the occurrence, an improbability in itself. On the other hand, no occurrence of

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any kind had taken place which could in any degree excuse such unwarrantable violence, and not the slightest attempt was made by the prisoner to seize the supposed thief, who from the nature of his wounds, as well as the circumstances of the case generally, must at the time have been defenceless, instead of being able, had he been so disposed, improbable in itself even on the prisoner's own showing, to attack the prisoner, as alleged by him. The deceased had two severe sword wounds on the left arm, a severe wound on the left heel, and a slight wound on the right wrist. To all this must be added the wounding Khoobloll. I therefore so far agree with the law officer, that the homicide cannot be regarded as accidental, and although culpable, as committed in a very wanton manner, yet that it undoubtedly took place on the spur of the moment, unawares, as tallies with the indistinct nature of the evidence for the prosecution. I convict the prisoner of culpable homicide, and by way of example to his class, ever prone to abuse their powers when least required, and most wanting in the proper exercise of them when most necessary, would sentence him to five (5) years' imprisonment in labor and irons."

Remarks by the Nizamut Adawlut.—(Presept: Sir R. Barlow, Bart.)—"This is not a case which calls for the punishment of the prisoner. The deceased went out of his house in the night. It was dark; but he was seen by the prisoner, who is the chowkeedar. On being hailed by him, deceased gave no answer. It seems he was deaf. The chowkeedar, taking him for a thief, cut him down. The prosecutor, brother of deceased, says there was no cause of enmity between the parties, and deposes that the death was accidental. The sessions judge is of opinion that the act was committed 'on the spur of the moment, unawares.' The prisoner is acquitted, and must be immediately released."

PRESENT:

SIR R. BARLOW, BART., }
W. B. JACKSON, Esq., } *Judges.*

TRIAL No. 1.—UKBUR ALEE

versus

RUJJUB ALEE (No. 1), SADUT ALEE* (No. 2), MIRZA MASOOM ALEE (No. 3), HOSSEIN KHAN (No. 4), AMEEROOLLAH* (No. 5), MOONGREE KHAN* (No. 6), MIRZA KAMOO BEG* (No. 7), WAHID KHAN* (No. 8), IBRAHIM KHAN* (No. 9), BAHADOOR KHAN (No. 10), TORAB ALEE* (No. 11), JHUMMUN KHAN* (No. 12), AHMED KHAN* (No. 13), CHUMMUN KHAN* (No. 14), IMDAD KHAN* (No. 15) AND HINGUN KHAN* (No. 16).

TRIAL No. 2.—TENEE KOONJRAH,

versus

RUJJUB ALEE (No. 17) AND HOSSEIN KHAN (No. 18).

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CRIME CHARGED.—TRIAL No. 1.—1st count, Nos. 1 to 4, culpable homicide of Usgur Alee, the nephew of prosecutor; 2nd count, Nos. 1 to 16, accomplices in the above crime; and 3rd count, Nos. 1 to 16, assault and forcible plundering of property not amounting to dacoity.

TRIAL No. 2.—1st count, culpable homicide of Jhalling, the father of prosecutor; and 2nd count arson, in burning down the houses and property of prosecutor, valued at rupees 179-1-0.

CRIME ESTABLISHED.—TRIAL No. 1.—Nos. 2, 5 to 9 and 11 to 16, accomplices in culpable homicide; and riotous assault and forcible plundering of property not amounting to dacoity.

Committing Officer, Mr. H. Doveton, deputy magistrate of Muddhypoora, Bhargulpore.

Tried before Mr. R. N. Farquharson, sessions judge of Bhargulpore, on the 29th June 1852.

Remarks by the sessions judge.—TRIAL No. 1.—“The prisoners plead *not guilty*.”

“The parties in this case are the heirs of invalid sepoys inhabiting the invalid thanna of Sateenabad.

“Prosecutor’s story is, that about 8 o’clock in the evening of the 30th April last, while some ceremonies were in progress relating to a marriage in the house of Tenee (witness No. 1),

Case of RUJJUB ALEE and others.

The court of Nizamut Adawlut quashed the proceedings of trial before the sessions judge, to have the charges against the prisoners amended by the magistrate.

Upon retrial one of the prisoners being convicted of murder, was sentenced to death, and the others to various terms of imprisonment, according to their degrees of guilt.

* These prisoners were sentenced by the sessions judge, and came before the court in appeal; the others, in both the trials, were referred by the lower court.

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a body of men including all the prisoners, sixteen in number, came up and demanded food of Tenee, who was standing at his door with a jar of sweetmeat in his hand; on his refusing immediate compliance, Rujjub and Hossein (prisoners Nos. 1 and 4) took the jar from him, broke it, and all the party began to eat the contents. Prosecutor and his nephew Usgur Alee, deceased, interfering to put a stop to this outrage, Ameeroolah (prisoner No. 5) called out '*mar, mar,*' &c., on which Rujjub, (prisoner No. 1) and Masoom (No. 3) struck Usgur Alee on the head and arm with *lattees*, and Hossein and Rujjub threw brick-bats, which struck deceased heavily on the side and felled him to the ground. The whole body of prisoners then attacked deceased; some striking and some thrusting with the butt-end of their *lattees*, and others compressing his throat, so that he died on the spot. The prisoners were all armed with *lattees* and *sotas*.

"The whole of this statement is clearly proved in evidence; and I have not the slightest doubt but that Usgur Alee met with his death at the hands of the prisoners as above described, and render the strongest suspicion that the act was premeditated; in which case the crime would have been wilful murder. There is not, however, sufficient evidence as to the intent and purpose of the principal offenders, while the openness of the attack in the main street of the village at 8 p. m., and the weapons used, are, I think, so far in favor of the prisoners, as to justify the deputy magistrate in his committal on the lesser charge of culpable homicide.

"The jury find prisoners Nos. 1, 3 and 4 guilty on all the counts charged against them; and prisoners Nos. 2 and from 5 to 16 inclusive, guilty of the second and third counts. I fully concur with the jury in their finding, and sentence prisoner No. 5 to seven (7) years' imprisonment with labor and irons, and prisoners Nos. 2, 6, 7, 8, 9, 11, 12, 13, 14, 15 and 16, to imprisonment for five (5) years with labor and irons.

"Prisoners Nos. 1 and 4 (found guilty in this and the following case,) are referred to the Nizamut Adawlut, with recommendation that they be transported beyond the seas for life. Prisoner No. 3 is also referred to the Nizamut Adawlut, with recommendation that he be imprisoned for a term of fourteen (14) years with labor and irons, and prisoner No. 10, for a term of ten (10) years, also with labor and irons. Before explaining these sentences, I will lay shortly before the court an account of the second crime of which Rujjub and Hossein (prisoners No. 1 and 4 of the above) have been also convicted."

Remarks by the sessions judge.—TRIAL No. 2.—"On the night of the 30th April, immediately after the death of Usgur Alee, prisoners Rujjub and Hossein, went to the house of

Jhalling, deceased, which was close by. Jhalling called them the murderers of Usgur Alee, and asked them why they came to his house; on which they set fire to the roof, and on its falling burning to the ground, threw him (Jhalling) on the flames, by which he was so much burnt that he died on the next day but one, Sunday, May 2nd.

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"The jury find the prisoner's guilty on both counts, and fully concurring in their verdict, I refer the two prisoners to the Nizamut above. This case again is on the verge of amounting to wilful murder. In the absence, however, of any attempt to keep deceased down on the flames, and want of convincing proof that the blow or push which precipitated him on the burning materials was intentional to the purpose of doing him any serious bodily injury, I have thought it best not to urge recommittal on the higher charge; the more especially as the punishment I would inflict for either of these very aggravated cases of culpable homicide is the severest next to the extreme penalty of the law.

"I will now proceed to point out further the aggravations and specialities attending these crimes as applicable to the several sentences I have proposed.

"The parties concerned in these cases are mostly old offenders; I beg also to call attention to the relationship extending through them, as evident from the calendar.

"It appears, on evidence borne out by the records of this office, that a very old feud has existed between two parties in this invalid thanna. In statement No. 1 for September 1833, (an extract† of which is appended,) will be seen what I take to be

* Prosecutor adduces several cases of former imprisonment; but no exact trace of these can be found in the Monghyr foudjdarce records.

† Extract from Statement No. 1 for September 1833.

"The prisoners in this case are heirs of invalid sepoys, and owing to one of their relations having been removed from an official situation in the thanna, they appear to have formed themselves into a party determined to wreak their revenge upon all individuals who were in any degree either favorable to, or instrumental in, causing his removal. They are violent and turbulent characters, as the following cases too plainly show, and their conduct in this case, as well as in others, was cowardly and brutal in the extreme.

"The prisoners were very properly convicted for murder, but in the absence of evidence showing an intention to take life, and with reference to the weapons made use of (*lattees*), I concurred in opinion with the law officer, in considering the graver offence not fully established. It is, however, a case of culpable homicide of an aggravated nature, and had I not possessed the power under the provisions of Regulation XV. of 1814, of awarding against the perpetrators a lengthened period of imprisonment, I should have referred the case for the orders of the Court."

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the cause and origin of the late attack on Usgur Alee, deceased. The individual Bhutto, whose murder is there charged against Ukbur Alee, the present prosecutor, Amooa, father of Usgur Alee, deceased, Bahadoor Khan (prisoner No. 10) and others,— was son of Moongree Khan (prisoner No. 6) and brother of Hossein Khan (No. 4); Ukbur Alee and Amooa were imprisoned on conviction of culpable homicide of Bhutto for fourteen (14) years. Amooa died in jail; Bahadgur Khan, imprisoned on the same account for ten (10) years, has since changed sides, and is now concerned against his former accomplices, *vide* the evidence of Sheikh Jheegoo (witness No. 2) and Sheikh Chumun (No. 3 in the calendar). No. 1, prosecutor Ukbur Alee, is a Sheea; Rujjub Alee and party are Soonnees. This sectarian difference, I have no doubt, tends to keep open old grievances, but I do not think it had anything to do with the immediate outrage in question.

With regard to the sentences detailed in the former part of this letter, I would explain first as to Rujjub and Hossein Khan, (prisoners Nos. 1 and 4). These are fully proved in evidence to have been, with No. 3, the first aggressors in the attack ending in Usgur Alee's death. They are both old offenders. As for motives, it appears from evidence of prosecutor and witnesses Nos. 2, 3 and 5, that Rujjub Alee and his father-in-law, one Heeyat Bux, (a rich man, who has hitherto supported him in several scrapes in the foudlardree,) were intimate friends of the deceased Bhutto, and his brother Moongree. We have also reason to believe from the same witnesses that Rujjub had been some time in treaty with Bahadoor Khan, to aid in killing or seriously maltreating Usgur Alee. This, though not directly proved against Rujjub, may be accepted as corroborative proof of his ill-will to deceased; further in support of which we have the fact, that while the attacking party amounted to twenty-five or thirty men, Usgur Alee alone was set upon with any violence, his life being, I imagine, considered as sufficient expiation for the blood of Bhutto. This at least is the view I have taken of the case. Hossein Khan is own brother of the deceased Bhutto, and the principal part proved against him in the death of Usgur Alee needs no further comment. The additional crime of arson, and causing the death of Jhalling, will, of course, weigh with the court in considering the sentences of these two men. I do not think, however, that anything further was required to subject them to the severest penalty of the law short of hanging.

"With regard to Masoom Alee, he is found guilty of being one of the principals in this cowardly attack of numbers on an unarmed man, and of being a leader in the blows and treatment

which caused Usgur Alee's death : his being an old offender need hardly be quoted in aggravation of his crime.

"Bahadoor Khan, the remaining prisoner referred to the Nizamut, was tried only as an accomplice. I need hardly recapitulate the causes of enhancement of his punishment. His former bad character and imprisonment, the evidence of witnesses Nos. 2, 3 and 5, and the total absence of any extenuating circumstance, even the inadmissible one of revenge for former injuries, render him peculiarly obnoxious to severe punishment.

"Prisoner No. 2 was acquitted on the first count, but with the remainder convicted on the second as accomplice. It is sufficiently proved that they were all on the spot, aiding and abetting in the assault on Usgur Alee, but with the exception of Ameeroollah (No. 5), merely as tools of the principal offenders, not as it appears to me with any previous concert or malice prepense.

"Ameeroollah (No. 5) is proved to have been the foremost of the accomplices, having been the first to call out 'man, mar,' when Usgur Alee attempted to interfere in favor of Sheikh Tence (witness No. 1). I have sentenced him to seven (7) and the rest to five (5) years' imprisonment, with labor and irons.

"The witnesses called for the defence almost invariably told against the prisoners, both as to facts and character. In the second case of homicide and arson, the prisoners requested that their witnesses might not be examined, they having been, they asserted, throughout tampered with by the prosecutor. Rujjub and one or two others pleaded an *alibi*, but the plea entirely broke down in evidence. The so-called confessions of prisoners Nos. 3, 4, 9, 10 and 11 are merely admissions that they were on the spot. These statements tend to criminate others, but do not acknowledge self-participation in the assault.

"That the deaths of both Usgur Alee and Jhalling were brought about by the causes stated, admit of no doubt: anything to the contrary is not attempted to be set up in the defence. I consider the evidence of Johwahir Chobey (witness No. 9), the native doctor attached to the Muddelhpoorah deputy magistracy, quite worthless as a medical opinion, and not altogether free from suspicion, where in the case of Usgur Alee he opened merely the head, and deposes on oath that death was not caused by the blow on the skull. The body of Usgur Alee was made over to him within thirty-six hours after death, and where he could open and dissect the head, there was no sufficient cause to prevent his opening the body, or at all events, endeavoring, by its close examination, to arrive at the probable cause of death."

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Resolution of the Nizamut Adawlut, No. 1253, dated 4th September 1852.—(Present: Messrs. W. B. Jackson, J. R. Colvin, A. J. M. Mills and R. H. Mytton).—"Read para. 8 of a letter No. 120, dated the 12th July last, from the sessions judge of Bhaugulpore referring trial No. 2,—being that of Tene Koonjrah, prosecutor, *versus* Rujjub Alee (No. 17) and Hossein Khan (No. 18) charged in the first count with culpable homicide of Jhalling, the father of the prosecutor, and in the second count, with arson, in burning down the houses and property of the prosecutor, valued at rupees 179-1-0.

"The Court observe that the sessions judge, Mr. Farquharson, has thus expressed himself regarding this case—'This case is again on the verge of amounting to wilful murder. In the absence, however, of any attempt to keep deceased down on the flames, and want of convincing proof that the blow or push which precipitated him on the burning materials was intentional to the purpose of doing him any serious bodily injury, I have thought it best not to urge recommitment on the higher charge, &c.'

"The facts, as stated in the sessions judge's letter, so distinctly make up the crime of murder that it is unaccountable he should have allowed the committal to stand with reference to the marginal words* from paragraph 16 of the Circular Order, No. 54, dated the 16th July 1830, and from paragraph 3,† of Circular Order, No. 70, dated

* "Thus if it be doubtful, from the evidence before a magistrate, whether the offence amounts to murder or only to culpable homicide, the commitment should be for murder."

† "If, however, the alteration should be required to be made upon the facts of a case, as derived from the evidence taken, and well established before the sessions judge, (this being a power to be exercised only on the plainest grounds,) the proceedings in the trial should at once be stopped, and the case remanded to the magistrate with the necessary directions for a fresh commitment."

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"The Court accordingly quash the proceedings of trial, as having been held in contravention of the above orders, and direct their retransmission to the sessions judge, to have the charges against the prisoners amended by the magistrate. They should be charged on a first count with the wilful murder of Jhalling, on a second count with the culpable homicide of Jhalling, and on a third count with arson, in burning down the houses and property of prosecutor, valued at rupees 179-1-0.

"The sessions judge will then proceed to try the prisoners *de novo* on the above charges, and dispose of the case in due course with as little delay as possible.

"The Court observe for the future guidance of the sessions judge that although the prisoners Rujjub Aleé and Hossein Khan, implicated in trial No. 2, are also implicated in trial No. 1, the two cases should have been forwarded with two separate letters of reference."

From the sessions judge of Bhaugulpore to the Register to the Court of Nizamut Adawlut, No. 219, dated 19th October 1852.

—"I transmit herewith, to be laid before the Nizamut Adawlut, the proceedings on the trial noted in the margin, held at this station, on the 16th instant.

TENEE KOONJRAH, SON OF JHALLING,
DECEASED, AND GOVERNMENT,
versus

RUJJUB ALEE (No. 1) AND HOSSEIN KHAN
(No. 2).

CRIME CHARGED.—1st count, wilful murder of Jhalling, deceased, the father of prosecutor; 2nd count, culpable homicide of Jhalling, aforesaid; and 3rd count, arson, in burning down the houses and property of prosecutor, valued at rupees 179-1-0.

This case was formerly reported on a committal and conviction for culpable homicide, but the crime being adjudged murder, the

the trial was quashed and a recommittal on that count ordered by the Nizamut Adawlut.

"The facts took place on the night of Friday the 30th April last, in the village of Sateenabad, within the invalid thanna of Surronjah. The parties are all Mahomedans, heirs of deceased invalidated sepoys. There had been an assemblage in the village on the occasion of a marriage procession, when a disturbance took place, resulting in the death by violence of one Usgur Aleé. The prisoners Rujjub and Hossein took part in this disturbance, and afterwards went to the house of Jhalling, deceased, who lived hard by. He accosted them as murderers, and bid them depart, on which they took fire from the *boorsee*, or moveable grate, and applied it to the grass *chopper* of the house, and when the *chopper* fell blazing to the ground, pushed Jhalling so as to throw him down on the flames, by which he was burnt to such a degree that he died two days afterwards. The occurrence took place on Friday night, and he died on the Sunday following.

"Prosecutor Teneé, son of deceased, was absent at the time; but returning the next morning, heard the circumstances from his mother, Musst. Gango, (witness No. 1), and saw his father lying on a mat dreadfully burnt. Jhalling deceased was a strong healthy man, but lame in one leg. There was previous enmity between prisoners and deceased, on account of the destruction of deceased's crops by prisoners' cattle.

"The evidence in support of this charge is that of Musst. Gango, wife of deceased, (witness No. 1,) who deposes distinctly to the facts as above noted. Witnesses Nos. 6, 7, 8, 9, 10 and

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11, all attest the burning of the house and the deplorable state of Jhalling from the injuries he received, but deny having seen the prisoners enter the premises or apply the fire, though in the deposition they gave on the former trial, the fact of both the prisoners having entered Jhalling's house, and been seen running away after it was on fire, is distinctly sworn to.

"Witnesses Nos. 4 and 5 depose to the burnt state of Jhalling, and to his having died from the injuries he received by burning. The lastnamed witness is the medical attendant at Muddehpoorah.

"Witnesses Nos. 4, 6 and 11 attest the deposition of Jhalling, deceased, as taken by the thanna jemadar in their presence. This deposition is to the effect before mentioned, describing the facts deposed to by Tenee and Musst. Gango; but the name of Rujjub only is mentioned by the dying man as concerned in the transaction.

"The prisoners in their defence deny the charge, and state as follows:—

"Rujjub (prisoner No. 1) that he was absent at his father-in-law's house from the previous Thursday, whence he was returning home, when he heard that Ukbur Alee had accused him of being concerned in the death of Usgur Alee. On his road home met Ukbur Alee with the police, when he was apprehended and sent to Muddehpoorah. He there heard that the darogah had been to the house of his father-in-law, and threatened them, forbidding their acknowledgment of Rujjub having been there at the time of the murder. Rujjub objects to the evidence of deceased's wife being received against him.

"Hossein (prisoner No. 2) denies all connexion with or knowledge of the crime; says that the charge is made through enmity, and the witnesses suborned by prosecutor, and that his name not being mentioned in Jhalling's dying deposition, should free him from the imputation.

"The witnesses to the defence prove nothing in favor of prisoners. The jury bring in a verdict of guilty on the first and third counts of the calendar, in which I concur.

"The prisoners are fully proved to have maliciously burnt down Jhalling's house and thrust him into the fire, which occasioned his death within forty-eight hours from the occurrence. I convict them therefore of the murder of Jhalling; but taking into consideration the possibility that there may have been no deliberate intention to kill, I would recommend that they be sentenced to transportation beyond seas for life."

Remarks by the Nizamut Adawlut.—(Present: Sir R. Barlow, Bart., and Mr. W. B. Jackson.)—TRIAL NO. 1.—MR. W. B. JACKSON.—Ukbur Alee *versus* Rujjub and others, (16 persons).

Charge against Nos. 1, 2, 3 and 4 :—

First.—Culpable homicide of Usgur Alee.

Charge against all the prisoners Nos. 1 to 16 :—

Second.—Being accomplices in the above, except Nos. 1, 2, 3 and 4.

Third.—Riotously assaulting and plundering, except Nos. 1, 3, 4 and 10.

TRIAL NO. 2.—Tencee Koonjrah *versus* Rujjub Alee (No. 1) and Hossein Khan (No. 2).

CHARGE.—*First.*—Murder of Jhalling, prosecutor's father.

Second.—Culpable homicide of ditto.

Third.—Arson, in burning down prosecutor's house.

“ These two cases are connected together so closely as almost to form one event. In the first case, the sessions judge convicts prisoners Nos. 2, 5 to 9, 11 to 16, on the second and third counts, and sentences them all to five (5) years' imprisonment with labor and irons, except No. 5, whom he sentences to seven (7) years' imprisonment with labor and irons; the prisoners Nos. 1, 3 and 4 he convicts on all the counts, and recommends a sentence of transportation for life on Nos. 1 and 4, and sentence of fourteen (14) years' imprisonment with labor and irons on prisoner No. 3; prisoner No. 10 he convicts on the second count, and recommends a sentence of ten (10) years' imprisonment with labor and irons.

“ In the second case, the sessions judge convicts the two prisoners of the first and third counts, murder and arson; and advises a sentence of transportation for life on both of them.

“ It appears that on the occasion of a marriage of the daughter of Tencee, he was distributing sweetmeats from an earthen pot at his own door, when Rujjub Alee (No. 1), Hossein Khan (No. 4), and the others, came up and snatched the pot from him, and broke it and ate up the sweetmeats which fell on the ground. Usgur Alee, deceased, and another remonstrated with them, when it seems they remembered an old grudge against Usgur Alee, whose father had killed a man named Bhuttun sometime before; they then assaulted Usgur Alee with sticks, and threw bricks at him; and when a blow brought him down on the ground, the rioters all, in number about twenty-five, fell on him and beat him in a variety of ways, and killed him on the spot: the whole of the prisoners under trial are recognized as present and being engaged in the assault; Rujjub Alee commenced the attack, and was the leader; he first struck Usgur Alee with his *lattee* on the head; Hossein Khan then struck him on the body with a brick, Rujjub Alee then also struck him with a brick; and Masoom Alee struck him with a *lattee*; then the general attack commenced in which but little

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could be distinguished, but the man was killed on the spot. The attack was entirely without a shadow of provocation, and the act was no doubt murder; but as the indictment is only for culpable homicide, the conviction cannot be for murder. The leaders, Rujjub Alee (No. 1), Masoom Alee (No. 3), Hossein Khan (No. 4), I convict of the culpable homicide charged against them, as well as of the riotous assault, and were there no other case against them, I should sentence them to transportation for life; but their criminality in the second case remains to be considered. Masoom Alee (No. 3) I sentence, as recommended by the sessions judge, to imprisonment with labor and irons for fourteen (14) years; the prisoner Bahadoor Khan (No. 10) I convict on the second and third counts, and sentence as an old offender to ten (10) years' imprisonment with labor and irons: the rest of the prisoners have been sentenced by the sessions judge, and I see no reason to interfere with his order regarding them.

"As regards the second case, I find that immediately after the rioters had killed Usgur, they went away towards the house of the deceased Jhalling; on their coming there, Jhalling told them that they were murderers, and desired them to leave his house: what was done by the rest of the rioters is not mentioned; but Rujjub Alee and Hossein Khan, the leaders in the other case, went into the house, and Rujjub Alee took fire from the *boorse*, a kind of fire-place, and placing it in some straw, which he had taken from the roof, set fire to the straw and laid it on the north side of the house, which being thatched, immediately took fire and burned; when the roof fell in, the two prisoners pushed Jhalling down into the burning straw, and burnt his entire body severely; with the exception of his chest and his face, he was burnt all over; the two prisoners then went away. Gango, Jhalling's wife, who was standing by and saw all this, then dragged him with both hands out of the fire; but he died of the injuries he had received on the third day from the occurrence. The evidence of the woman Gango is distinct to the fact that both the prisoners pushed the deceased into the fire; but the deposition of Jhalling himself, taken when he was in a dying state, mentions only Rujjub Alee. I have no doubt that both were engaged in this act, but as the deceased only mentions one of them, it is possible he may have been the most active assailant. I would convict the two prisoners of the murder and arson charged against them: and taking into consideration that they committed another culpable homicide on the same day, I can see nothing which should bar a sentence of death, with the exception of the single fact that the deceased Jhalling did not mention Hossein Khan;

admitting this as a proof that Hossein Khan took a less active part than Rujjub Aleé, I would sentence Rujjub Aleé only to suffer death and Hossein Khan to be transported for life.

“ Let these cases go before another judge for an opinion regarding Rujjub Aleé.”

SIR R. BARLOW.—“ This case comes before me with reference to the prisoner Rujjub Aleé *only* ; the other prisoners have already been disposed of. The prisoner was by order of this court tried on a charge of wilful murder and has been convicted by the sessions judge, who for the reasons stated in his letter of the 19th October last, recommends a sentence of transportation for life should be passed upon him. The records show that the deceased before his death, on Sunday, deposed to the prisoner being the person who assaulted him ; and charged him before the jemadar of police with having pushed him on to the fire, which was caused by the burning of the house to which the prisoner had himself set fire. •

“ The eye-witness Musst. Gangó, widow of deceased, on seeing what had occurred, cried out the names of the prisoner and another, and called to some neighbours, who depose to hearing her cries and going to the spot, where they found deceased burnt severely ; Musst. Gangó, before the sessions judge, at first named the prisoner only as the person who pushed her husband into the fire, but on being cross-examined named Hossein Khan also. The cause of this murder is stated to have arisen out of another case in which the prisoner and others were concerned on the same day. The prisoner pleads *alibi* at his father-in-law's house ; his witnesses say nothing in his favor ; some of them he repudiates. There is nothing of mitigation to be found in the circumstances on the record. I concur in passing capital sentence on the prisoner. ••

“ Let a warrant issue accordingly.”

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PRESENT :

SIR R. BARLOW, BART., *Judge.*MUSST. HURSOONDOREE DASSEA AND
GOVERNMENT*versus*

SUMBHOORAM DEB.

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Case of
SUMBHOORAM
DEB.

The prisoner convicted of killing the deceased, an intruder in his premises in prosecution of an intrigue. Sentence passed by the sessions judge, mitigated.

CRIME CHARGED.—Wilful murder of Nemaee Deb.

CRIME ESTABLISHED.—Culpable homicide.

Committing Officer, Mr. A. Abercrombie, assistant with powers of joint magistrate Junnaipore, Mymensing.

Tried before Mr. R. E. Cunliffe, sessions judge of Mymensing, on the 7th October 1852.

Remarks by the sessions judge.—“From the evidence of the witnesses, and the admissions of the prisoner in the Mofussil and foudaree, it appears that the deceased was caught about one *puhur* of the night in the prisoner's house, who beat him to that degree that he was unable to move from the spot, and that he died on the third day, as he was being taken to the thanna. The evidence of the civil surgeon shows that there were bruises on the chest and stomach, caused by some blunt instrument, as the end of a *lattee*, which had caused death by inflammation of the left lung, liver and spleen. The prisoner in both his confessions states he caught the deceased effecting a burglary by a hole into his house, when he struck him a blow, and the deceased, in attempting to escape, fell into a ditch, when he gave him five or six more blows with it; and in this court he made no defence beyond that it should be taken into consideration whether he came as a thief or as an intriguer, and named witnesses to prove deceased was a thief, of which they alleged ignorance. The *futwa* of the law officer convicts the prisoner of culpable homicide of the deceased, who had gone to his house on an intrigue, in which I concurred; for I can place no reliance on prisoner's assertion that the deceased was committing a burglary (nor would that, under the circumstances, have justified the homicide,) as he did not show the hole the deceased is said to have made to any of the neighbours until long after the uproar had been heard at his house.”

Sentence passed by the lower court.—Seven (7) years' imprisonment, with labor in irons.

Remarks by the Nizamut Adawlut.—(Present: Sir R. Barlow, Bart.)—“The prisoner confesses throughout that he was the only person who beat the deceased, and pleads he found him going out of his house after he had made a hole in it, and effected a burglary. None of his witnesses confirm his story

about the burglary, while there is strong reason to believe that the deceased had an intrigue with one Chand Monee, the prisoner's aunt, and that this was the cause of the death of the deceased, who was detected by the prisoner near the house when he was in the compound. The prisoner's confessions show that he not only struck but also pursued the deceased, and repeated the blows three or four times, which caused a fatal result. I concur in the prisoner's conviction and sentence him to five (5) years' imprisonment, with irons and labor."

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Case of
SUMHROORAM,
DEB.

PRESENT :

J. DUNBAR, Esq., Judge.

A. J. M. MILLS, }
AND } Esqrs., Officiating Judges.
R. H. MYTTON, }

GOVERNMENT AND JAHANGEER

versus.

SHEIKH SULLEEM.

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Case of
SHEIKH SUL-
LEEM.

CRIME CHARGED.—Wilful murder of Adoo, and severely wounding Zuheer.

Committing Officer, Mr. W. M. Beaufort, magistrate of Backergunge.

Tried before Mr. A. S. Annand, officiating sessions judge of Backergunge, on the 22nd November 1852.

Remarks by the officiating sessions judge.—“The wounded man Zuheer, the son of Adoo, deceased, and a peadah of Aleemeah's, states, that on a Thursday in Assin he went in a boat to Komerkoolee, by order of the cutcherry *omlah*, to get plantains from the *ryots* for the festival of the *Doorgah Poojah*, and his father Adoo accompanied him for the purpose of cutting grass; when they arrived at Komerkoolee he got plantains from Lukee Ram Chung and others, and finding that the tide was now against him and that he would not get the boat up against it without more assistance, he left his father in it and proceeded to seek some one to help him, when seeing the prisoner Sulleem repairing a dinghee on the banks of the khal, he went up to him and asked him to come and assist him; on which he got angry, abused him and was going to strike him with the *dao* which he had in his hand, when deponent called out to Lukee Ram Chung, who was digging at a distance of seventy or eighty *haths*, and whilst he was turned away, Sulleem struck him on the back with the *dao*; that he then ran off towards Lukee Ram Chung and the prisoner came after him with the *dao*. On seeing which

Although the act of the prisoner was held to be wilful murder, his previous excitement from a quarrel with deceased's son, and having the deadly weapon accidentally in his hand at the time, as also striking the blow on a part of the body where it was unlikely to prove fatal, held to be extenuating circumstances. Sentence, transportation for life, with hard labor.

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Case of
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his father Adoo, who was in the boat, came forward, when Sulleem struck him on the left leg, at the back of the knee-joint, and he fell to the ground. Lukee Ram Chung came and bound up witness's wound and they saw that Adoo's leg was nearly cut off at the knee, only about two fingers remaining. Lukee Ram Chung then went to secure the prisoner, who had gone off, and he and Koodrutoollah shortly returned with him, when, calling the neighbours, they went off in the boat towards the thanna with the prisoner. Adoo died almost immediately after he was put into the boat, from the effects of the wound. Deponent was sent into Burrisaul and remained in the hospital for fourteen or fifteen days, when he was discharged cured.

"This man has a scar upon the right side of the back near the spine, six fingers long and one broad.

"The prisoner Sulleem confessed at the thanna the crimes with which he was charged. He said that on the previous day he was mending his boat on the banks of the khal, when Zuheer peadah came up to him and asked him to pay one rupee *khazana*, and four annas as a fine for a claim of *zerat punalee*, and then to assist him in getting his boat up against the stream, as he was going back with plantains for the *poojeh*; that he was unwilling to do so, when they began to abuse one another, and Zuheer seized him, as if to take him away by force, when, getting loose, he struck him a blow at the back and wounded him, and Adoo calling out, he struck him a blow with the *dáo* on the back of the knee, and was going to his own house, when Lukee Ram Chung called out to Koodrutoollah, and they seized, bound, and brought him back to Komerkoolee. Before the magistrate he says that Zuheer beat him severely, and that he became somewhat *behosh* when he saw Zuheer and Adoo come up to him, and that they were both wounded, when Gopaul duffadar said that he had wounded them; that afterwards he confessed at the thanna through the persuasion of Shiruff-oollah Chowkeedar and Jahan-geer. In my court he denies his guilt altogether.

"The evidence of Zuheer is corroborated in all material points by the witness Lukee Ram Chung, who saw the prisoner wound both him and his father; in part by that of the witness Neemai Chung, who saw Sulleem wound Zuheer, and then ran away through fear; by the evidence of Koodrutoollah, who seized the prisoner when told what had happened by Lukee Ram Chung; by the evidence of Badoollah, who picked up the bloody *dáo* which Sulleem had thrown away before his house; and by others, and confirmed as it all is by the confession of the prisoner at the thanna, leaves no doubt that the facts of the case are as Zuheer has stated.

"The assistant surgeon deposes that the left leg of Adoo was nearly cut off at the knee-joint and the division of the popliteal

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artery must have caused speedy death. The direction of the wound was from above and downwards and inwards; that the party who inflicted such a wound must have struck with his whole strength, and that it would be inflicted by a heavy and sharp *dado* like the one shown to him in court. That Zuheer had an incised wound on the back two inches long, which penetrated to the bone, of a severe and dangerous character.

"The assessors convicted Sulleem of the wilful murder of Adoo and the wounding of Zuheer, and concurring in this verdict, and seeing no extenuating circumstances in the case to warrant any other sentence, I recommend that Sulleem should suffer the extreme penalty of the law."

Remarks by the Nizamut Adawlut.—(Present: Messrs. A. J. M. Mills and R. H. Mytton).—MR. DUNBAR.—"This case appears to have been tried with the aid of a jury, not with the assistance of assessors. The sessions judge has erroneously applied the latter term to the jurymen in his report. The verdict of the jury finds the prisoner guilty, and the sessions judge concurs. The case is indeed a very clear one. The evidence leaves no room to doubt that the prisoner wilfully and wickedly inflicted the wound, which caused the death of Adoo. Zuheer was no doubt wrong in trying to force the prisoner to go with him against his will, and (as he admits) abusing him and speaking disrespectfully of his father, because he would not go; but the provocation was not such as to justify the prisoner's attack upon him, much less that upon Adoo, who had given him no cause of offence, and who naturally enough jumped out of the boat when he saw his son so ruthlessly assaulted. I can find no palliation of the guilt of the prisoner, nor grounds for mercy. I would sentence the prisoner Sheikh Sulleem to suffer death.

MR. MYTTON.—"The accounts given of the commencement of the dispute, which ended in the wounding of one person and the death of the other, by Zuheer, the wounded man, and by the prisoner in his confession to the darogah, differ in one material point. Zuheer states that he merely asked him to assist him in towing his boat, while the prisoner asserts that on being refused, he attempted to force him to do it. The witnesses, who saw the quarrel, do not in the sessions court state whether any attempt to force the prisoner to tow the boat against his will was used or not, but the most important of the two (Luke Ram, No. 2), in his deposition to the darogah, corroborated the prisoner's statement on this point, and Nemay (No. 3) in the sessions court states that Zuheer was the aggressor in using abusive language. From Luke Ram's evidence it appears that the prisoner had the *dado* in his hand when the quarrel commenced. I therefore think that there can be little doubt that Zuheer was

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the aggressor. It has not however even been pleaded by the prisoner at any stage that the deceased Adoo gave him any provocation. His killing this man therefore is assuredly wilful murder.

"However Zuheer was the aggressor; the offence was committed with a weapon which was in the prisoner's hand at the time he was provoked; the father arrived almost instantaneously upon the wounding of Zuheer, and as it were to his rescue, while the prisoner was in a state of excitement. The blow which caused the father's death was not aimed at a part of his body which it would be natural for a person to strike at having a distinct intention to cause death, although death might be the probable consequence.

"Under these circumstances," I think that the prisoner's life may with propriety be spared. I would sentence him to transportation for life."

MR. MILLS.—"No previous ill-will existed between the prisoner and the deceased. The weapon was unfortunately in the prisoner's hand; he was at the time under the influence of excitement arising from the quarrel, which was provoked by the prosecutor, and immediately preceded the act. Under these circumstances I think that the justice of the case will be satisfied by a sentence of imprisonment for life in transportation. I sentence him accordingly."

PRESENT :

J. R. COLVIN, Esq., Judge.

GOVERNMENT

versus

SHABBUT SHEIKH.

THE officiating sessions judge of Beerbhoom, considering the sentence passed by the magistrate on the 8th October 1852, upon the prisoner for escaping from jail, to be illegal, referred the case to the Nizamut Adawlut on the 7th December last, under Section V. Act XXXI. of 1841, with the following report :

“ On review of the Monthly Statement of the disposal and casualties among the prisoners confined in jail during the month of October last, the Government have called for a report of the punishment, if any, that had been awarded to a guard for his negligence and to a prisoner for escaping from jail. The magistrate has reported that the latter was sentenced on the 8th October 1852 to six (6) months' imprisonment, in addition to his former sentence,* with labor and irons. As such a sentence is illegal under the provisions of Construction No. 1215, I consider it my duty, as the man has not appealed, to lay the case before the court, in order that the error may be corrected.”

Resolution of the Nizamut Adawlut, No. 1678, dated the 21st December 1852.—(Present : Mr. J. R. Colvin.)—“ The court, having perused the papers above recorded connected with the case, direct that so much of the sentence passed by the officiating magistrate's court at Beerbhoom on the 8th October last, upon Shabbut Sheikh, as imposed the penalty of labor and irons in addition to imprisonment, on account of the offence of escaping from jail, be annulled, and that the prisoner be sentenced, in addition to imprisonment for the period of six (6) months, as awarded by the officiating magistrate for the above offences, beyond the sentence for his original offence of the theft of grain, to payment of a fine of rupees twenty (20) within ten days from the date of intimation to him of this order, and, in default of payment, to labor until the fine be paid or the term of his sentence expire.”

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SHABBUT
SHEIKH.

It is illegal to sentence a prisoner, convicted of escaping from jail, to labor and irons, in addition to imprisonment. The sentence should impose a fine, commuted to labor, see Construction 1215.

* “ Six months' imprisonment, with labor in irons, on conviction of theft of grain.”

PRESENT :

J. R. COLVIN, Esq., Judge.

GOVERNMENT

versus

GOPAUL CHAND SIRCAR.

1852.

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Case of
GOPAUL
CHAND SIR-
CAR.

The Regu-
lations do not
authorize a
penalty for
the act of
giving false
information
to the police,
regarding the
alleged neg-
lect of a
chowkidar.

THIS case was referred to the Nizamut Adawlut by the sessions judge of East Burdwan, on the 15th December 1852, with the following report, (No. 684, dated 13th Idem,) from the magistrate of the district, under Section V., Act XXXI. of 1841 :

" Baboo Kissory Chand Mitter, the deputy magistrate of Jehanabad, exercising the full powers of a magistrate within the thanna of Roynah in this district, sentenced, on the 24th September last, the prisoner to pay a fine of ten (10) rupees for giving a false information to the police regarding the neglect of some chowkeedars. As, however, I can find no regulation prescribing penalties for such an offence, and it appears that this false information was not given on solemn affirmation, and the deputy magistrate can point out no regulation authorising his proceeding, I am obliged to forward the case for the orders of the superior court."

Resolution of the Nizamut Adawlut, No. 1691, dated the 22nd December 1852.—(Present: Mr. J. R. Colvin.)—" The court, having perused the papers above recorded connected with the case, reverse the sentence passed on the 24th September last, by the deputy magistrate of Jehanabad, on Gopaul Chand Sircar, gomashita, for the reasons stated in the letter of the magistrate of East Burdwan, No. 684, of the 13th instant. The amount of ten (10) rupees, if it has been levied as a fine from Gopaul Chand Sircar, will be returned to him."

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